

**LOAN GUARANTEE
SOLICITATION ANNOUNCEMENT**



**U.S. Department of Energy
Loan Guarantee Program Office**

**FEDERAL LOAN GUARANTEES FOR PROJECTS THAT
MANUFACTURE COMMERCIAL TECHNOLOGY
RENEWABLE ENERGY SYSTEMS AND COMPONENTS**

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¹ Please refer to Section VI.A for multiple due dates regarding Part I submissions.

² Please refer to Section VI.A for multiple due dates regarding Part II submissions.

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UNITED STATES
DEPARTMENT OF ENERGY

FULL ANNOUNCEMENT

Loan Guarantee Solicitation for Applications for Projects that Manufacture Commercial Technology Renewable Energy Systems and Components

Solicitation Number: DE-SOL-0002197

I. Solicitation Description

A. Purpose of Solicitation

Applicants are invited to apply for loan guarantees from the United States Department of Energy (“**DOE**”) under Section 1705 of Title XVII of the Energy Policy Act of 2005, 22 U.S.C. 16511-16514, as amended (“**Title XVII**”). Under this Solicitation, DOE seeks applications exclusively for loan guarantees under Section 1705(a)(1) and Section 1705(a)(2) of Title XVII to finance projects and facilities located in the United States that manufacture Commercial Technology renewable energy systems or related components (“**Commercial Technology Renewable Energy Manufacturing Projects**”). All capitalized terms used but not otherwise defined herein shall have the meanings set forth in Section IX.

B. Background

The American Recovery and Reinvestment Act of 2009 (the “**Recovery Act**”)³ created Section 1705 of Title XVII to promote the rapid deployment of renewable energy projects, electric power transmission projects, and leading edge biofuels projects (the “**1705 Program**”). The primary goals of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. Applicants must comply with requirements of the Recovery Act applicable to them and are encouraged to review and become familiar with the requirements of the 1705 Program and the provisions set forth elsewhere in this Solicitation. The Section 1705 Program is subject to all of the requirements of Title XVII, including Section 1702, but excluding Section 1703. Please refer to Attachment D for additional information regarding such requirements.

DOE issued this Solicitation in support of the 1705 Program and in furtherance of the Recovery Act goals, and will make available up to seven hundred fifty million dollars (\$750,000,000) to pay the Credit Subsidy Costs of loan guarantees issued as part of this Solicitation for Commercial Technology Renewable Energy Manufacturing Projects⁴.

Applicants must comply with OMB’s Initial Implementing Guidance for the Recovery Act (the “**OMB Implementing Guidance**”), as well as any additional Recovery Act guidance that OMB and/or DOE may issue. Copies of the authorities cited herein may be found at <http://www.lgprogram.energy.gov/> (the “**Program Website**”). Applicants should familiarize themselves with this guidance before submitting an application.

Applicants must submit applications in response to this Solicitation in accordance with the detailed instructions provided in Section VI and Attachment A. Applicants will need to provide detailed information to support a thorough analysis of the project or facility’s compliance with the objectives and

³ Please refer to Section 406 of the Recovery Act, P.L. 111-5.

⁴ In total, the Recovery Act made available approximately three billion nine hundred thirty five million dollars (\$3,935,000,000), after rescission in Pub. L. No. 111-47 (Aug. 7, 2009) of two billion dollars (\$2,000,000,000).

requirements established by Title XVII, including Section 1705, the Recovery Act, this Solicitation, and the rigorous underwriting criteria appropriate for projects or facilities of this scale.

DOE will guarantee one hundred percent (100%) of the Guaranteed Obligation and the loan shall be senior secured debt funded by the Federal Financing Bank.

II. Eligibility Information

A. Project Eligibility

An “**Eligible Project**” under this Solicitation consists of a renewable energy manufacturing project or facility located in the United States that:

1. Manufactures Commercial Technology products that support the generation of electricity or thermal energy from renewable resources;
2. Has Project Costs greater than seventy-five million dollars (\$75,000,000);
3. Is able to obtain a credit rating equivalent of ‘BB’ or better from Standard & Poor’s or Fitch, or ‘Ba2’ or better from Moody’s, as evaluated without the benefit of any DOE guarantee or any other credit support;
4. Will create or retain jobs in the United States; and
5. Otherwise meets all applicable requirements of Title XVII, including Section 1705, this Solicitation, including all attachments and all applicable requirements of the Recovery Act.

Projects that do not meet the criteria set forth in this Section II.A may be eligible to apply for a loan guarantee under separate existing or future solicitations. Please refer to the following solicitations for other eligible technologies such as renewable energy generation and innovative energy efficiency, renewable energy and advanced transmission and distribution projects: DE-FOA-0000166 and DE-FOA-0000140, respectively. Please visit the Program Website for additional guidance regarding these and other solicitations.

B. Illustrative types of Eligible Projects

The following sample list of potential types of Eligible Projects is provided for illustrative purposes only as other types of projects may qualify. However, please note that submitting an application that supports a project or facility that fits within one or more of the illustrative categories set forth below does not assure that such application will be selected to receive a loan guarantee.

1. Renewable Energy Manufacturing:
 - a) wind energy component or systems manufacturing facilities;
 - b) solar photovoltaic (PV) component or system manufacturing facilities;
 - c) concentrated solar power component or system manufacturing facilities;
 - d) hydropower component or system manufacturing facilities;
 - e) geothermal component or system manufacturing facilities;
 - f) other geothermal power cycle component or system manufacturing facilities; or
 - g) ocean wave, tidal, and river current (e.g., hydrokinetic) component or system manufacturing facilities.

C. Commencement of Construction

In compliance with the Recovery Act, a project or facility must commence construction on or before September 30, 2011. DOE is not authorized to enter into a Loan Guarantee Agreement and must terminate any outstanding Conditional Commitment, without any further obligation to the Applicant or any Project Sponsor, for any project or facility that does not meet this requirement. The term “commencement of construction” means, with respect to an Eligible Project, that:

1. The Borrower has completed all pre-construction engineering and design, has received all necessary licenses, permits and local and national environmental clearances, has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Eligible Project may begin (or, if previously interrupted or suspended, resume) and proceed to completion without foreseeable interruption of material duration; and
2. Such physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the primary site of the Eligible Project has begun (or resumed).

A project or facility that begins construction before an Applicant submits an application may be eligible for a loan guarantee. However, a project or facility that has completed or nearly completed construction by the time an Applicant submits any part of an application will not be eligible for a loan guarantee. In addition, DOE will not issue loan guarantees to support projects or facilities that have received a commitment for post-construction financing or to refinance projects or facilities that have already been fully financed.

III. Application Requirements

A. Required Information & Materials

1. **Required Materials:** A detailed checklist of required information and materials for each application may be found in Attachment A.
2. **Application Form:** Each application must include a completed application form that is signed by an individual with full authority to bind the Applicant and the Project Sponsors. A sample of this form may be found in Attachment B.
3. **Additional Requested Information:** In addition to other information requested in this Solicitation, each Applicant may also be required to submit additional information subsequently requested from DOE in order to clarify an application.

B. Compliance with NEPA Regulations

The National Environmental Policy Act (“**NEPA**”) requires federal agencies to consider the potential environmental impacts of their proposed actions. DOE must complete NEPA review before it may provide financial assistance in the form of a loan guarantee, thus NEPA compliance is integrated into DOE’s Loan Guarantee Program decision-making procedures to ensure that a project’s environmental impacts are properly considered.

1. There are three levels of NEPA assessment:
 - a) **Environmental Impact Statement (“EIS”)**: For projects with the potential for significant effects on the quality of the human environment;
 - b) **Environmental Assessment (“EA”)**: For projects with potential impacts on biological, physical, and socio-cultural resources; and
 - c) **Categorical Exclusion (“CX”)**: For projects that may be exempt from assessment (e.g. re-equipping and retooling within existing facilities).
2. The NEPA review process begins once the project or facility has been accepted into the Loan Guarantee Program’s due diligence phase. If DOE invites a Project Sponsor to begin negotiations for a loan guarantee and an EA or EIS is not otherwise available from another federal agency, DOE will evaluate the project or facility to determine the appropriate level of NEPA review required.
3. The Applicant, with DOE oversight, is responsible for providing all necessary analysis and documentation to comply with NEPA.
4. Because an EIS typically requires an 18-24 month processing time, projects requiring DOE to prepare an EIS will be unlikely to complete the NEPA review process prior to September 30,

2011. However, albeit extraordinarily difficult to satisfy this timing requirement, projects will not be rejected because an EIS is required if it appears that DOE can expedite the process so as to allow such Recovery Act deadline to be met. Examples of projects normally requiring an EIS can be found in the DOE NEPA implementing regulations at 10 CFR 1021, Appendix D to Subpart D.

5. Once DOE initiates the NEPA review process, Applicants should consult with DOE before commencing any work on the project site (beyond preliminary design activities). Such consultation is necessary as certain actions may cause an adverse environmental impact on the project or otherwise adversely affect the NEPA review process to the extent that DOE might discontinue consideration of an application or terminate an outstanding Conditional Commitment.
6. NEPA review must be completed before a loan guarantee can be issued.

Additional information on the NEPA process for loan guarantee projects is available in Attachment C and on the Program Website at:

<http://www.lgprogram.energy.gov/NEPA-4.html>; and

http://www.gc.energy.gov/NEPA/selected_guidance_tools.htm.

C. Davis Bacon Requirements

The 1705 Program requires that each recipient of a DOE loan guarantee or credit subsidy assistance provide the Secretary with reasonable assurance that all laborers and mechanics employed in the construction and performance of a project or facility, including those employed by contractors or subcontractors, will be paid wages at rates not less than those prevailing on similar work in the locality of the project, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (the “**Davis Bacon Act**”). An Applicant's obligation to provide such reasonable assurance and maintain compliance with the Davis Bacon Act shall be effective as of the closing date of the DOE loan guarantee. DOE will not issue a loan guarantee or pay the Credit Subsidy Cost for any project or facility if an Applicant fails to comply with the Davis Bacon Act and provide such reasonable assurance. Failure to provide such reasonable assurances in respect of a project will adversely impact the availability of appropriated funds under the Recovery Act to cover the Credit Subsidy Cost for such project. Each Borrower will be required in the Loan Guarantee Agreement to make representations and warranties, covenant to, and satisfy conditions precedent to closing and to each disbursement that, in each case, relate to its compliance with the Davis Bacon Act and all applicable Davis Bacon Act regulations, including all requirements set forth in 29 CFR Part 5. Applicants should visit the U.S. Department of Labor website at <http://www.dol.gov> and the Program Website for additional guidance regarding the Davis Bacon Act.

D. Recovery Act Reporting Requirements

Section 1512 of the Recovery Act requires recipients of Recovery Act funding to report certain information specified therein to the agency issuing such funding within ten (10) days after the end of each calendar quarter. Borrowers receiving Credit Subsidy assistance in connection with a loan guarantee issued pursuant to this Solicitation will be required to comply with this requirement by reporting such information to DOE. OMB has issued interim guidance on these requirements in the OMB Implementing Guidance; however, the federal government has not finalized the implementing instructions of the Recovery Act, particularly with respect to such reporting. Applicants should visit the Program Website for additional guidance regarding these Recovery Act reporting requirements.

E. Buy American

Section 1605 of the Recovery Act prohibits the use of funds appropriated or otherwise made available by the Recovery Act for any project or facility involving the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with United States obligations under international agreements, and it provides for waiver under

certain enumerated circumstances. OMB has issued interim guidance on these requirements in the OMB Implementing Guidance. If Section 1605 of the Recovery Act is applicable to a project or facility, any Loan Guarantee Agreement with respect to such project or facility will require compliance with this provision. Applicants should visit the Program Website for additional guidance regarding the application of Section 1605 of the Recovery Act.

IV. Evaluation Criteria

A. Project Evaluation Criteria

While the absence of one or more of the following characteristics is not disqualifying, DOE will favorably consider applications for projects or facilities that demonstrate as many of the following factors as possible:

1. The appropriateness of the requested amount of the loan guarantee given the nature and scope of the project or facility;
2. The total amount and nature of the eligible Project Costs and the extent to which Guaranteed Obligations fund Project Costs;
3. The levels of market, regulatory, legal, financial, technological, and other risks associated with the project and their appropriateness for a loan guarantee provided by DOE;
4. The comprehensiveness of the information contained in the application, including a detailed description of the nature and scope of the project and the risk coverage of the requested loan guarantee, to enable DOE to perform a thorough assessment of the project or facility;
5. The viability of the project or facility without guarantees (whether from DOE or otherwise);
6. The project or facility's inability to obtain private financing on reasonable terms;
7. The importance of the project or facility in creating and retaining manufacturing jobs in the energy sector;
8. The importance of the project or facility in expanding the production of renewable energy systems or components in the United States;
9. The suitability of the project site. Generally, a project is restricted to one location within the United States that is dedicated to its performance. However, DOE may, in its discretion, consider an application for a project using a particular technology that is proposed to be situated in two or more locations in the United States. If the activities to be conducted at such multiple locations are integral components of a unitary plan that is important to the viability of the project and at least one of the locations is identified in the application, DOE may support the project to the extent of two or more of the proposed locations; and
10. The effect of the project or facility on the environmental needs (including climate change) and energy goals of the entire United States or any state or region thereof.

As the above factors are not intended to be exhaustive, DOE may consider such other criteria that DOE deems relevant in evaluating the merits of a project or facility.

B. Applicant Evaluation Criteria

While the absence of one or more of the following characteristics is not disqualifying, DOE will favorably consider applications submitted by Applicants or their respective parent organizations that can satisfy as many of the following factors as possible:

1. A significant level of equity investment in the project;
2. Diligent pursuit of the project's objectives, including initiating and completing the project in a timely manner;
3. Low level of reliance upon other federal and non-federal governmental assistance such as grants, tax credits, or other loans or loan guarantees to support the financing, construction, and

operation of the project, including, but not limited to, the Section 48C tax credit, as described in Section IV.D. below;

4. The ability to provide a high level of safeguards to the federal government in the event of default through collateral, warranties, credit enhancements, including, without limitation, guarantees, letters of credit, pledges of non-project collateral and any other tangible or non-tangible credit support and other assurance of repayment;
5. The capacity and expertise to successfully operate the project, based on factors such as management organization and the nature and extent of corporate and personal experience, particularly in production and sales;
6. The ability to ensure that the project will comply with all applicable laws and regulations;
7. A history of successfully manufacturing and selling systems or components similar to those proposed in the application, or if applicable, a history of successfully manufacturing and selling systems or components relevant to this Solicitation that were created or assembled in facilities that were used previously for non-energy purposes, but for which the raw material acquisition, fabrication, assembly, sales, and distribution processes are similar to the proposed project or facility;
8. If foreign-owned, then ownership by a foreign-based company that has demonstrated a history of successfully manufacturing and selling systems or components relevant to this Solicitation in its country of origin or in other mature markets and is establishing new Commercial Technology Renewable Energy Manufacturing Projects in the United States. Such foreign entity should be capable of providing sales data for its product distribution to the United States market or other mature markets for a period of at least three years;
9. The ability to establish or retrofit Commercial Technology Renewable Energy Manufacturing Projects; and
10. A finding of CX based on the NEPA review conducted by DOE, however a project with a finding of EA will not be excluded based on the need for more detailed environmental analysis. A project with a finding of EIS, albeit extraordinarily difficult to meet the September 30, 2011 deadline for commencement of construction, will likewise not be excluded assuming DOE can expedite the process for a more detailed environmental analysis.

As the above factors are not intended to be exhaustive, DOE may consider such other criteria that DOE deems relevant in evaluating the merits of an application.

C. Finance Evaluation Criteria

While the absence of one or more of the following characteristics is not disqualifying, DOE will favorably consider applications that meet the following financial criteria:

1. The Guaranteed Obligation is expected to be senior-secured debt benefitting from full recourse to the balance sheet of the Applicant and/or a full guarantee from the Project Sponsor, a credit-worthy parent, or a third-party acceptable to DOE.
2. To the extent practicable, DOE may consider limited recourse project financing structures (with full recourse to the balance sheet of the Project Sponsor until certain defined completion tests are met) for start-up manufacturing operations. If an Applicant proposes a limited recourse financing structure, it must justify the use of such a structure in detail and demonstrate that DOE would be protected appropriately against project risks.
3. Notwithstanding the foregoing, strong applications that meet other Title XVII objectives may be considered.

D. Section 48C Tax Credits

Section 1302 of the Recovery Act amended the Internal Revenue Code of 1986 by creating Section 48C in an effort to encourage taxpayers to re-equip, expand, or establish manufacturing facilities for the production of certain energy related property in the United States. Section 48C authorizes the Secretary

of the Treasury, in consultation with the Secretary, to award up to two billion three hundred million dollars (\$2,300,000,000) in tax credits for qualified investments in advanced energy projects that support new, expanded, or re-equipped domestic manufacturing facilities. As described in Section IV of Attachment D, this Solicitation provides that the face value of the debt guaranteed by DOE will be limited to no more than eighty percent (80%) of total Project Costs. For the purpose of this calculation, for projects receiving a Section 48C tax credit, in no case shall the total debt guaranteed by DOE exceed sixty percent (60%) of total Project Costs. To the extent that an Applicant is eligible to receive the Section 48C tax credit, such Applicant should be aware that applications demonstrating a low level of reliance upon other federal and non-federal governmental assistance, including tax credits, to support the financing, construction, and operation of the project will be considered more favorably by DOE.

V. Application and Evaluation Process

A. Application Components

The application is divided into a Part I submission and a more detailed Part II submission. Detailed instructions for the contents of the Parts I and II submissions are set forth in Attachment A.

Part I: Part I of the application provides DOE with a summary level description of the project or facility, technical information, background information on management, financing strategy, and progress to date of critical path schedules. These schedules include items such as obtaining licenses or regulatory permits and approvals, site preparation and long lead procurements, and are used as a basis for determining the overall eligibility of the project or facility. DOE will evaluate each Part I submission based upon the factors summarized in Attachment A – Part 1.

Part II: The Part II submission may be filed at any time after DOE notifies an Applicant that its Part I submission is complete and its project or facility has been determined to be an Eligible Project. The Part II submission consists of the items summarized in Attachment A – Part 2 as well as other information that may be requested to facilitate DOE’s due diligence review. Part II submissions may be made in one of three (3) rounds of review as outlined below. While all Part II submissions shall be competitively evaluated against all others submitted during the corresponding round of review, submissions will be reviewed in the order they are received. Therefore, earlier submissions may enjoy a first mover’s advantage. DOE shall have the right, in its sole discretion, to defer consideration of incomplete Part II submissions to a later round, if one is available. Proposed projects or facilities that do not meet the requirements set forth in this Solicitation will not receive any further consideration.

B. Loan Guarantee Process Overview

The following table outlines the application, approval, and post-selection process for obtaining a Loan Guarantee under this Solicitation:

<u>Stage</u>	<u>Party Responsible</u>	<u>Fees due from Applicant⁵</u>
• Issue Solicitation	DOE	--
• Confirm Applicant eligibility	Applicant	--
• Fulfill application requirements	Applicant	--
• Submit Part I application	Applicant	25% of Application Fee
• Review Part I and determine eligibility	DOE	--
• Invite qualified Applicants to submit Part II application	DOE	--

⁵ Please refer to Section VII for an explanation of all fees associated with submitting an application under this Solicitation.

<u>Stage (continued)</u>	<u>Party Responsible</u>	<u>Fees due from Applicant</u>
• Submit Part II application	Applicant	75% of Application Fee
• Review and compete Part II applications	DOE	--
• Begin due diligence of selected Applicants	DOE	Consulting and legal fees
• Negotiate Term Sheets with selected Applicants	DOE/Applicant	--
• Issue Conditional Commitment for Loan Guarantee	DOE	25% of Facility Fee
• Negotiate Transaction Documents	DOE/Applicant	--
• Determine Credit Subsidy Cost	DOE	
• Execute Loan Guarantee Agreement	DOE/Applicant	75% of Facility Fee/ Maintenance Fee/ Credit Subsidy Cost ⁶

C. Summary of Application Evaluation

DOE will conduct an initial review of each Part I submission to determine whether or not such submission is responsive to the requirements of this Solicitation. DOE will conduct a more detailed, weighted review of each Part II submission based on financial, technical and programmatic factors. The following table summarizes the relative weightings for each factor:

<u>Criteria</u>	<u>Weighting</u>
Financial Factors: Creditworthiness	55.0%
Technical Factors: Technical relevance, merit, and approach; Work Plan, construction plan, and policy considerations	25.0%
Programmatic Factors: Legal and regulatory factors	<u>20.0%</u>
TOTAL	100.0%

Each factor set forth above is further described below in this Section V.

D. Part II Review of Financial Factors (Weighting: 55%)

As part of its review process, DOE will conduct a thorough review of all financial factors associated with an application. Among other considerations, the financial review will:

1. Assess the Creditworthiness of the Project:
 - a) The proposed project's economic viability with and without the DOE loan guarantee, the availability of other federal and state incentives other than the DOE loan guarantee, its ability to generate sufficient cash flow to service the borrower's debt obligations over the life of the loan guarantee, etc.
 - b) Each Project Sponsor's financial commitment to the project, financial strength, including its ability to pay transaction costs arising out of the project (e.g., fees and expenses for DOE's

⁶ Pursuant to the Recovery Act, DOE has received appropriated amounts from Congress to cover the Credit Subsidy Costs associated with the potential loan guarantees issued under this Solicitation. While DOE anticipates that it will pay the Credit Subsidy Cost, this commitment is subject to the availability of funds. Section 1702(b) of Title XVII provides that DOE must receive either an appropriation for the Credit Subsidy Cost of a loan guarantee or, in lieu of an appropriation, a cash payment of such cost directly from the Applicant.

independent consultants and outside counsel) on a timely basis and the credibility of its business and financial plans.

- c) Overriding market factors that could significantly influence the success of the project.
2. Assess the financial viability of the project or facility and review the sources and uses of funds proposed by the Applicant in the financial plans submitted with the application, and review updates and projections for future financial performance;
3. Verify the Applicant's modeling assumptions and calculations as a means of assessing the project's expected financial performance and ability to service debt. All models submitted should take into account the cost of complying with the Davis Bacon Act and, if applicable, the cost of complying with Section 1605 of the Recovery Act;
4. Consider the Project Sponsors' prior financial and managerial investment in the project or facility and its capability to implement the project or facility as proposed;
5. Review the value of the collateral will be examined in detail. This evaluation will be based on, among other things, the nature of the collateral pledged, appraiser reports submitted by the Applicant and expected cash availability under a default scenario;
6. To the extent the project or facility is proposed as a corporate finance transaction or will benefit from of a parent or acceptable third party guarantee, analyze its status as compared to existing senior secured lenders to the parent or acceptable third party; and
7. Review all other financial factors DOE deems necessary.

DOE also will consider, as a non-weighted financial criterion, the best use of the loan guarantee (i.e., applications that demonstrate the most efficient and competitive uses of the loan guarantee).

E. Part II Review of Technical Factors (Weighting: 25%)

In addition to its internal technical resources, DOE will utilize independent third-party advice in reviewing each project or facility's technical efficacy. Determination of the technical merit of the project or facility will be influenced by the quality of the IER. In addition to the technical merits determined by DOE after assessment of the engineering and construction plans submitted by the Applicant, there will be an assessment of the ability of the project or facility to enhance affected local, state or regional renewable energy generation goals, as well as to facilitate the realization of environmental goals of the affected locality, state or region or the nation.

Consideration will be given to the period of time required to place the project into service, the potential for reducing costs to consumers and the commercial scale of the project. Consideration also will be given to creating a balance in the types of Commercial Technology Renewable Energy Manufacturing Projects that are included in DOE's loan guarantee portfolio. The technical review includes the following:

1. **Technical Relevance and Merit** (Weighting: 5%): DOE will evaluate the extent to which the project or facility will enhance renewable energy system or component manufacturing on a national, state, regional, or local basis.
2. **Technical Approach/Work Plan** (Weighting: 10%): Projects and facilities will be evaluated based on the transparency and technical strength of the approach used to achieve the stated objectives, including:
 - a) technical readiness for near-term commercial application;
 - b) the extent to which all required contractors have been engaged;
 - c) the readiness for delivery of major components and required manufacturing equipment;
 - d) the extent to which pre-construction design and prototype testing has been completed;
 - e) the extent to which technology certification of the end product is available;
 - f) the projection for long term applicability of the end product; and
 - g) the extent to which all necessary land rights and state and local permits, as well as the environmental clearances necessary to proceed, have been obtained or approved.

3. **Construction Plan** (Weighting: 10%): DOE will evaluate the project's construction plan based on the Project Costs and the integrated schedule.
4. **Technical Policy Considerations**: DOE also will consider the technological and geographical diversity of project applications.

F. Part II Review of Programmatic Factors (Weighting 20%)

1. **Legal Review** (Weighting 10%): As part of its due diligence review, DOE will review the project or facility's legal structure and risks. This review will involve analysis of all legal documents among the parties, including equity owners, entities providing other forms of financing, engineers and construction contractors, operation and maintenance contractors, equipment suppliers, host communities, and any other counter-parties of interest. DOE also will analyze the intellectual property rights of all relevant parties in the project or facility. In addition, DOE will evaluate the project's capacity to mitigate risk from potential legal and regulatory issues that could jeopardize the success of the project and the likelihood of the project to reach financial close and commence construction no later than September 30, 2011. Areas of review will include any pending or threatened litigation involving the project or facility or any project participant.
2. **NEPA Review** (Weighting: 10%): DOE will evaluate the project or facility to determine the appropriate level of NEPA review required. The Applicant must provide enough information to enable DOE to determine the level of NEPA review that would be required if the Applicant were selected to begin negotiations with DOE. More information on the NEPA process and the list of environmental data that should be included in each application may be found in Attachment C.

G. Review and Denial

In reviewing completed applications, and in prioritizing and selecting projects or facilities for due diligence review, DOE will apply the criteria set forth in Title XVII and this Solicitation. Applications will be considered in a competitive process (i.e. each application will be evaluated against other applications responsive to this Solicitation). Concurrent with its review process, DOE will consult with the Secretary of the Treasury regarding the terms and conditions of a potential loan guarantee.

H. Notification

Selection of projects for due diligence review will be made after the closing of each round of Part II review. If DOE determines that a project may be suitable for a loan guarantee, DOE will notify the Applicant in writing and begin negotiating a Term Sheet. There can be no assurance that any project or facility will be selected for due diligence review or offered a Term Sheet. If at any time after DOE invites an Applicant to submit a Part II application and DOE decides not to proceed further with due diligence review or negotiation of a Term Sheet, DOE will inform the Applicant in writing of the reason(s) for denial. Denial by DOE will not prejudice the Applicant from applying for a loan guarantee pursuant to the terms of any existing solicitation.

I. Government Right to Reject or Negotiate

DOE reserves the right, without qualification, to reject any or all applications received in response to this Solicitation or select any application for negotiation of a Term Sheet.

VI. Application Schedule and Instructions

In order to encourage submissions of complete applications as early as possible after the date of this Solicitation, Part II submissions will be systematically reviewed on a continuous basis as soon as they are received, however, final selection of qualified Applicants will not occur until after all Part II submissions are competitively evaluated against all others submitted during the corresponding round of review.

A. Application Submission Schedule

The following table summarizes the application submission schedule:

Solicitation Issue Date	August 10, 2010
First Part I Submissions Due Date	September 30, 2010
Second (Final) Part I Submission Due Date	November 30, 2010
First Round Part II Submission Due Date	November 30, 2010
Second Round Part II Submission Due Date	December 31, 2010
Third (Final) Round Part II Submission Date	January 31, 2011

B. Electronic Application Submissions

Applicants must submit applications in electronic form via the DOE Loan Guarantee Program's online application portal ("**Application Portal**"). Supporting documents for applications will be accepted in the following formats: Microsoft Word, Excel, or PowerPoint, or Adobe PDF. Please do not encrypt, compress or zip any files. In order for an application to be considered under this Solicitation:

- Part I must be submitted electronically no later than 11:59 pm Eastern Time, November 30, 2010; and
- To be considered for a particular Part II round of review, Applicants must submit their Part II application no later than 11:59 pm EST of the corresponding due date for that round of Part II submissions.

1. Application Portal Submission Process:

- a) Applicants may access the Application Portal from the Program Website or directly at <https://www.doeloan.com>.
- b) If an application requires substantive changes or additions prior to a submission deadline, the Applicant must:
 - (i) Notify DOE of their intent to update their application via a link that may be found on the Applicant's Review/Submit page within the Application Portal;
 - (ii) Once the Applicant has received permission from DOE to update their application, they may upload new document(s) via the Application Portal; and
 - (iii) Applicants must provide the date of the new submission in its file name and indicate the section of the application to which the update is relevant.
- c) DOE will calculate the time of delivery for Part I or Part II of an application as provided by the time stamp for such submission as given by the Application Portal. In the event that a due date falls on a Saturday, Sunday or federal holiday, then such due date shall be deemed to be the next following business day.
- d) Prior to the applicable due date and time for the Part I and Part II submissions, it is the responsibility of the Applicant to verify that each submission was successfully transmitted and that DOE has received each such submission. This may be done by printing the confirmation page provided to the Applicant from the Application Portal.

C. Registrations

To apply electronically via the Application Portal, Applicants must complete the following:

1. obtain a Dun and Bradstreet Data Universal Numbering System number (plus 4 digit extension if applicable);
2. obtain a North American Industry Classification number; and
3. register with the Central Contract Registry.

If you do not know or do not have a Dun and Bradstreet Data Universal Numbering System number, you can search for it or request one at: <http://fedgov.dnb.com/webform/displayHomePage.do>.

If you do not know or do not have a North American Industry Classification number, you can search for it or request one at: <http://www.census.gov/naics/>.

If your company is not registered with the Central Contract Registry, please register at <http://www.ccr.gov>. When registering with the Central Contract Registry, use the “Grants” format unless you have reason to use any of the other formats.

D. Additional Application Submission Media

1. Each Applicant must also submit an executed copy of the completed and executed DOE application, a form of which is provided in Attachment B and made available in the Application Portal. The executed application form may be delivered in PDF format to lgprogram@hq.doe.gov or two (2) executed hard copies may be mailed to the address below.
2. In addition to completing the application using the Application Portal, Applicants may also submit the application via CD-Rom if they so choose:
 - a) Part I on no more than two (2) CD-Roms; and
 - b) Part II on no more than two (2) CD-Roms.

All non-electronic submissions should be sent to the address listed below. Such media should arrive by express mail no later than two (2) business days after the due date for the corresponding Part I or Part II submission.

U.S. Department of Energy, Loan Guarantee Program
Attn: CTMS Applications
1000 Independence Avenue, SW
Washington, DC 20585

E. Formatting Instructions

Applicants must provide all requested information in the following format:

1. Documents supporting and forming any part of an application must:
 - a) Be typed in Times New Roman 11 point;
 - b) Single-spaced;
 - c) Adhere to a format consisting of standard 8.5” x 11” paper; and
 - d) Have 1” margins (top, bottom, left and right) with exceptions for charts, graphics, and similar materials.
2. Applicants should provide a “short name” or other identifier that will allow for easy identification of the project or facility.
3. The naming convention for each submitted data element shall be as follows: Project “short name”.Part I or Part II submission round.section character reference.data element number.data element name.date last modified as yyymmdd. Certain documents uploaded through the Application Portal will be renamed automatically to conform to this convention.

(e.g. “ProjectABC.II.B.1.Executive Summary.20100301”)

F. Multiple Applications

Applicants may apply more than once under this Solicitation.

VII. Fees, Costs and Expenses

A. Fees

Certain fees are required as part of complete applications and defray the administrative costs associated with DOE conducting its internal technical and financial review of the project or facility. Section 1702(h) of Title XVII requires DOE to “charge and collect fees for guarantees in the amounts the Secretary determines are sufficient to cover applicable administrative expenses” of the loan guarantee program. Section V.B specifies each stage of the loan guarantee process at which Applicants must pay the Administrative Cost of Issuing a Loan Guarantee. Non-refundable fees due to DOE during the course of the application and loan guarantee process must be paid directly to Treasury and are specified below:

1. **Application Fee:** Applicants must pay a non-refundable application fee (the “**Application Fee**”) in the amount of \$125,000. The Application Fee will be payable as follows:
 - a) Twenty-five percent (25.0%) of the application fee must be paid on or prior to the date on which an Applicant submits Part I of its application in the amount of (\$31,250). This first payment must be wired to Treasury no later than 11:59 pm EST on the due date for the Applicant’s desired round of Part I submissions.
 - b) Seventy-five percent (75.0%) of the application fee must be paid on or prior to the date on which an Applicant submits Part II of its application in the amount of (\$93,750). This second payment must be wired to Treasury no later than 11:59 pm EST on the due date for the Applicant’s desired round of Part II submissions.
2. **Facility Fee:** Applicants must pay a non-refundable facility fee (the “**Facility Fee**”) in an amount equal to 1/2 of 1.0% of the Guaranteed Obligation. The Facility Fee will be payable as follows:
 - a) Twenty-five percent (25.0%) of the facility fee must be paid on or prior to the date on which the Applicant executes the DOE-approved Term Sheet.
 - b) Seventy-five percent (75.0%) of the facility fee must be paid on or prior to the financial closing date for the Loan Guarantee Agreement.
3. **Maintenance Fee:** Applicants must pay a non-refundable maintenance fee (the “**Maintenance Fee**”) to cover DOE’s administrative expenses in servicing and monitoring the Loan Guarantee Agreement from the execution of the Loan Guarantee Agreement by the Borrower through payment in full of the Guaranteed Obligation in connection with such Loan Guarantee Agreement. The amount of the Maintenance Fee is expected to be in the range of \$50,000 to \$150,000 per year and may be paid either:
 - a) Each year in advance, commencing upon the financial closing date of the Loan Guarantee Agreement; or
 - b) As a one-time fee on the financial closing date and in an amount equal to the aggregate sum of such annual maintenance fees specified in the Loan Guarantee Agreement for the entire term of the loan guarantee, discounted to net present value.
4. **Treasury Wiring Instructions:** Application Fees, Facility Fees, and Maintenance Fees will only be credited by wire transfers to the following address:

U.S. Department of the Treasury
ABA No. 0210-3000-4 TREASNYC/CTR/BNF=D89000001
OBI=LGPO - Commercial Technology Manufacturing Solicitation Application Fee for
(Applicant name)

No funds for the payment of these fees shall be obtained from the federal government or from a loan or other instrument guaranteed by the federal government.

B. Loan Guarantee Credit Subsidy Cost

The Credit Subsidy Cost is the net present value of the estimated long-term cost to the U.S. government of a loan guarantee as determined under the applicable provisions of the Federal Credit Reform Act of 1990, as amended (“**FCRA**”). Section 1702(b) of Title XVII provides that DOE must receive either an appropriation for the Credit Subsidy Cost of a loan guarantee or, in lieu of an appropriation, a cash payment of such cost directly from the Applicant. Pursuant to the Recovery Act, DOE has received appropriated amounts from Congress to cover the Credit Subsidy Costs associated with the potential loan guarantees issued under this Solicitation. In accordance with FCRA and this Solicitation, DOE must consult with OMB and obtain approval for DOE’s calculation of the Credit Subsidy Cost for each proposed loan guarantee prior to entering into any Loan Guarantee Agreement.

C. Independent Consultants and Outside Counsel to DOE

Each Applicant shall be responsible for paying the fees and expenses incurred by DOE’s independent consultants and outside legal counsel in connection with such Applicant’s project or facility under all circumstances. Upon making the determination to engage independent consultants or outside counsel with respect to an application, DOE shall proceed in evaluating and processing an application only upon a Project Sponsor’s entering into a payment agreement in respect of the corresponding project or facility. Applicants are advised that such services shall be rendered for the benefit of DOE in connection with an Applicant’s project and that DOE is the client of such independent consultants and outside counsel. In the event that a Project Sponsor fails to comply with the provisions of such payment agreement, DOE may stop work on the application and/or reject an application.

VIII. Additional Provisions

A. Commitment of Public Funds

DOE shall not be bound by oral representations made during the application stage or during any negotiations. No binding commitment, agreement, obligation, or right of any kind may be assumed or enforced by any Applicant or Project Sponsor against DOE other than in accordance with a duly and validly executed Loan Guarantee Agreement.

B. Procurement or Financial Assistance Award

Neither a procurement action under Title 48 of the Code of Federal Regulations (“**CFR**”) nor a financial assistance award under 10 CFR Part 600 is contemplated by this Solicitation.

C. Post-selection Process and Additional Provisions

Please refer to Attachment D for information regarding the post-selection process and additional provisions to this Solicitation.

D. Warning

It is a crime to knowingly make false statements to a federal agency. Misrepresentation of material facts may be the basis for denial of an application for a loan guarantee from DOE. Penalties upon conviction may include fine and imprisonment. For details, please refer to 18 U.S.C. 1001.

E. Questions

Questions relating to the application process should be sent via e-mail to DOE at lgprogram@hq.doe.gov. Please include “RE: CTMS Question - ” and a few words describing the question in the subject line. DOE will respond to questions as appropriate and may make public the most frequently asked questions by posting such questions with DOE’s responses on the Program Website. Should DOE decide to begin negotiations with an Applicant, DOE will assign a single point of contact for all subsequent questions and/or discussions on matters relevant to the corresponding application.

IX. Defined Terms

“Administrative Cost of Issuing a Loan Guarantee” means the total of all administrative expenses that DOE incurs during:

- The evaluation of an application for a loan guarantee;
- The offering of a Term Sheet, executing the Conditional Commitment, negotiating, and closing of a Loan Guarantee Agreement; and
- The servicing and monitoring of a Loan Guarantee Agreement, including during the construction, startup, commissioning, shakedown, and operational phases of an Eligible Project.

“Applicant” means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other business entity or governmental non-federal entity that has submitted an application to DOE and has the authority to enter into a Loan Guarantee Agreement with DOE under Section 1705 of Title XVII for an Eligible Project under this Solicitation.

“Borrower” means any Applicant who enters into a Loan Guarantee Agreement with DOE and issues Guaranteed Obligations.

“Commercial Technology” means a technology in general use in any commercial marketplace, within or outside the United States, at the time the Term Sheet is issued by DOE. A technology is in general use if it has been installed in and is being used in three (3) or more commercial projects anywhere in the world in the same or a substantially similar manner as in the proposed project, and has been in operation in each such commercial project for a period of at least two (2) years. The two (2) year period shall be measured, for each project, starting on the in service date of the project or facility employing that particular technology.

“Conditional Commitment” means a Term Sheet offered by DOE and accepted by the Applicant, with the understanding of the parties that if the Applicant thereafter satisfies all specified and precedent funding obligations and all other contractual, statutory and regulatory requirements, or other requirements, DOE and the Applicant will execute a Loan Guarantee Agreement: Provided that the Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement; and Provided further that the Secretary may not delegate this authority to terminate a Conditional Commitment.

“Contracting Officer” means the Secretary of Energy or a DOE official authorized by the Secretary to enter into, administer and/or terminate DOE Loan Guarantee Agreements and related contracts on behalf of DOE.

“Credit Subsidy Cost” has the same meaning as “cost of a loan guarantee” in section 502(5)(C) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5)(C)), which is the net present value, at the time the Loan Guarantee Agreement is executed, of the following estimated cash flows, discounted to the point of disbursement:

- Payments by the federal government to cover defaults and delinquencies, interest subsidies, or other payments; less
- Payments to the federal government including origination and other fees, penalties, and recoveries; including the effects of changes in loan or debt terms resulting from the exercise by the Borrower, Eligible Lender or other Holder of an option included in the Loan Guarantee Agreement.

“Eligible Lender” means the Federal Financing Bank.

“Equity” means cash contributed by the Borrowers and other principals. Equity does not include proceeds from the non-guaranteed portion of Title XVII loans, proceeds from any other non-guaranteed loans, or the value of any form of government assistance or support.

“Federal Financing Bank” means an instrumentality of the United States government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq). The Bank is under the general supervision of the Secretary of the Treasury.

“Guaranteed Obligation” means any loan or other debt obligation of the Borrower for an Eligible Project for which DOE guarantees all or any part of the payment of principal and interest under a Loan Guarantee Agreement entered into pursuant to Title XVII.

“**Holder**” means any person or legal entity that owns a Guaranteed Obligation or has lawfully succeeded in due course to all or part of the rights, title, and interest in a Guaranteed Obligation, including any nominee or trustee empowered to act for the Holder or Holders.

“**IER**” shall mean an independent engineering report for the Applicant’s project or facility that has been prepared for the benefit of DOE by an independent engineer with experience in the industry and familiarity with similar projects.

“**Loan Agreement**” means a written agreement between a Borrower and an Eligible Lender or other Holder containing the terms and conditions under which the Eligible Lender or other Holder will make loans to the Borrower to start and complete an Eligible Project.

“**Loan Guarantee Agreement**” means a written agreement that, when entered into by DOE and a Borrower, an Eligible Lender or other Holder, pursuant to Title XVII, establishes the obligation of DOE to guarantee the payment of all or a portion of the principal and interest on specified Guaranteed Obligations of a Borrower to Eligible Lenders or other Holders subject to the terms and conditions specified in the Loan Guarantee Agreement or any other written agreement entered into by DOE and a Borrower, an Eligible Lender or other Holder for such purpose.

“**OMB**” means the Office of Management and Budget in the Executive Office of the President.

“**Project Costs**” means those costs, including escalation and contingencies, that are to be expended or accrued by Borrower and are necessary, reasonable, customary and directly related to the design, engineering, financing, construction, startup, commissioning and shakedown of an Eligible Project. Eligible and ineligible Project Costs are specified in Attachment A – Part 2.

“**Project Sponsor**” means any person, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company or other business entity that assumes substantial responsibility for the development, financing, and structuring of a project eligible for a loan guarantee and, if not the Applicant, owns or controls, by itself and/or through individuals in common or affiliated business entities, a five percent or greater interest in the proposed Eligible Project, or the Applicant.

“**Secretary**” means the Secretary of Energy or a duly authorized designee or successor in interest.

“**Solicitation**” means this solicitation, including all Attachments.

“**Term Sheet**” means an offering document issued by DOE that specifies the detailed terms and conditions under which DOE may enter into a Conditional Commitment with the Applicant. A Term Sheet imposes no obligation on the Secretary to enter into a Conditional Commitment.

“**Treasury**” means the U.S. Department of the Treasury.

“**United States**” means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa or any territory or possession of the United States of America.

X. References

This Solicitation was developed pursuant to the following statutes and regulations, each of which may be found at the Program Website, <http://www.lgprogram.energy.gov>.

- A. Energy Policy Act of 2005
 - Public Law 109-58 (August 8, 2005)
 - Title XVII Incentives for Innovative Technologies
 - 22 USC 16511- 16514 (August 8, 2005)
- B. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 at <http://www.recovery.gov>
 - Division A, Title IV. Department of Energy Programs, “Title 17 – Innovative Technology Loan Guarantee Program”

- Section 406. Renewable Energy and Electric Transmission Loan Guarantee Program (amends Title XVII to create a “Temporary Program for Rapid Deployment of Renewable Energy and Electric Power Transmission Projects” under new Section 1705)
 - Section 1302. Credit for investment in advanced energy facilities
 - Section 1512. Reports on Use of Funds
 - Section 1605. Buy American
- C. The OMB website, http://www.whitehouse.gov/omb/memoranda_default/
- D. OMB’s Initial Implementing Guidance for the Recovery Act. See M-09-10 (February 18, 2009) located at: http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf
- E. OMB’s Updated Implementing Guidance for the Recovery Act. See M-09-15 (April 3, 2009) located at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf
- F. OMB’s Updated Implementing Guidance for the Recovery Act. See M-09-21 (June 22, 2009) located at http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf
- G. 29 CFR Part 5, Subpart A (Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction - Davis-Bacon and Related Acts Provisions and Procedures) located at http://www.dol.gov/dol/allcfr/Title_29/Part_5/Subpart_A.htm
- H. U.S. Department of Labor, Wage and Hour Division, Davis-Bacon and Related Acts located at <http://www.dol.gov/whd/contracts/dbra.htm>
- I. Selected Davis Bacon Act Wage Decisions located at <http://www.wdol.gov/dba.aspx#0>
- J. U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, All Agency Memorandum No. 207 dated May 29, 2009 located at: <http://www.dol.gov/whd/recovery/AAM207.pdf>
- K. Supplemental Appropriations Act for the Consumer Assistance to Recycle and Save Program, 2009, Pub. L. No. 111-47 (August 7, 2009)
- L. Council for Environmental Quality (CEQ) Regulations at 40 CFR 1500-1508 located at: <http://ceq.hss.doe.gov/nepa/regs/ceq/1500.htm#1500.5>
- M. CEQ Guidance, “Forty Most Asked Questions Concerning CEQ’s NEPA Regulations,” Question No. 11 (March 23, 1981) located at <http://ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#11>
- N. <http://www.energy.gov>
- O. <http://www.ccr.gov> and <http://fedgov.dnb.com/>
- P. The Application Portal: <https://www.doeloan.com>
- Q. Title 48 of the Code of Federal Regulations; and
- R. 10 CFR Part 600
- S. Freedom of Information Act, 5 U.S.C.552; located at: http://www.whitehouse.gov/the_press_office/FreedomofInformationAct; <http://www.justice.gov/ag/foia-memo-march2009.pdf>; and <http://www.justice.gov/oip/foiapost/2008foiapost26.htm>.

ATTACHMENT A

UNITED STATES DEPARTMENT OF ENERGY

APPLICATION SUBMISSION INSTRUCTIONS FOR COMMERCIAL MANUFACTURING TECHNOLOGY SYSTEMS

The application is divided into a Part I submission and a more detailed Part II submission. Part I of the application provides DOE with a summary level description of the project or facility, technical information, background information on management, financing strategy, and progress to date of critical path schedules. This information will be used as a basis for determining the overall eligibility of the project or facility. DOE will evaluate each Part I submission based upon the factors summarized herein, however, DOE may require that Applicants provide additional certifications or supporting documentation as part of the project evaluation process. Prior to the submission of a detailed Part II submission, to the extent that there are any material deviations from the information provided to DOE in the Part I submission, the Applicant must promptly notify DOE no later than three (3) business days after becoming aware of any such change by requesting approval from DOE to update their Part I submission via the Review/Submit page within the Application Portal. Upon DOE notice to Applicant of approval to re-open Applicant's application, Applicant must provide DOE with updated information via the Application Portal no later than ten (10) business days after receiving such notice from DOE.

I. PART I Submission

A. Application Information

1. **Project Name:** Assign a short project name for purposes of identification.
2. **Evidence of Authority:** Submit evidence that the signatory of the application has authority to bind the Project Sponsor to the commitments and representations made in the application and attests as to the accuracy of the information provided in the application process.
3. **Equity Commitment Letters:** Provide a copy of the equity commitment letters from each project investor and a description of the sources of equity.
4. **Project Participants:** List the parties involved with the project (e.g., Applicant, each Project Sponsor, construction contractor, principal vendors, principal offtake contractors, etc.), their functions and contact information.
5. **Applicant Point of Contact Information:** Please include the full legal name of each contact person, such individual's position/title, phone number, fax number, e-mail address and mailing address.

B. Project Description

1. **Executive Summary:** Provide a description of the nature and scope of the proposed project or facility, including the technology, site, purpose, size, capacity, design features, key metrics and key milestones. Describe the commercial feasibility of the manufacturing technology(ies) and how you intend to assure, to the extent possible, the further commercial availability of the technology(ies) in the United States. Include target dates for:
 - a) financial close of the Loan Guarantee Agreement;
 - b) commencement of site preparation and construction;
 - c) commercial operation; and
 - d) marketing the goods or product produced by the manufacturing process.

2. **Project Eligibility:** Provide a brief explanation of:
 - a) How and to what extent the proposed project or facility will qualify as a project or facility that manufactures components related to renewable energy systems.
 - b) The likelihood that the project will commence construction on or before September 30, 2011, and the basis for that conclusion, including a summary of critical path activities and schedules, such as licensing or regulatory permits and approvals, site preparation and long lead procurements.
3. **Project Sponsors' Capabilities:** Describe each Project Sponsor's capabilities, financial strengths and proposed equity investment in the project, as well as the project's strategic significance to each Project Sponsor.
4. **Project Costs:** Provide the estimated total Project Costs and a summary detailing key assumptions and the methodology used to calculate the Project Costs. Include all eligible costs that you have paid and expect to pay and that are directly related to the project. Also include costs for escalation and contingencies in this calculation. A definition of Project Costs may be found in Part 2 of this Attachment A.

C. Technical Information

Provide a conceptual level technical project description, including a description of the basic processes, and discussion of proposed siting and facility footprint, including:

1. Conceptual level sketches and details outlining general plant layout, process and materials flows, and operating parameters and throughputs for key processes;
2. Construction plan;
3. Operation and maintenance plan (O&M); and
4. Raw material, equipment, and component supply chain.

D. Legal and Regulatory Information

1. Provide timelines for receipt of all required regulatory approvals.
2. Provide a summary of any pending or threatened (in writing) action, suit, proceeding, or investigation by a governmental authority, of any kind, including any action or proceeding of or before any governmental authority, that relates to the project or facility or to the Applicant, any Project Sponsor or the anticipated Borrower, and the status of any appeals.

E. Summary Business and Financial Plans

1. **Summary Business Plan:** Provide a summary description of the following elements of the Applicant's business plan for the project or facility:
 - a) Market analysis;
 - b) Product or component off-take or sales agreements; and
 - c) Estimate of the number of construction jobs and permanent jobs expected to be created or retained in the United States if the project were to proceed as proposed in the application.
2. **Summary Financial Plan:** Provide a summary description of the following elements of the Applicant's proposed financial plan for the project or facility:
 - a) The term sheet for the Guaranteed Obligation;
 - b) The amount of expected equity investments;
 - c) The preliminary funding plan for the Guaranteed Obligation, including the total amount for (i) working capital financing, (ii) medium-term financing for machinery and equipment and (iii) longer-term financing for the site and facility;
 - d) The timing of expected equity contributions and debt funding;
 - e) The timing of repayment of expected debt funding; and

- f) Other federal and non-federal governmental (including state) incentives or other assistance on which the project relies, including grants, tax credits and other loan guarantees to support the financing, construction and operation of the project or facility.

F. Application Certifications

1. **Lobbying, Debarment and Related Certifications and Assurances:** In submitting an application for a loan guarantee under Title XVII, Applicants must provide certain certifications and assurances contained in the form entitled “U.S. Department of Energy Loan Guarantee Certifications and Assurances,” which form may be downloaded from the Program Website: http://www.management.energy.gov/business_doe/business_forms.htm
2. **Applicant Validation Statement:** Provide a written statement that, based on the project or facility information provided by the Applicant, the Applicant attests that there is a reasonable prospect that the guaranteed portion of the Guaranteed Obligation and any other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application.
3. **Sample Letter of Commitment:** For an application to be considered under this Solicitation, Part I must include a letter of commitment signed by an authorized representative of the Applicant in the form set forth on the following page.

[DATE]

Director, DOE LGPO

This letter confirms our intent to seek a loan guarantee pursuant to solicitation no. DE-SOL-0002197, dated August 10, 2010 (the "Solicitation"). We have met all mandatory requirements as specified in the Solicitation including all attachments. Our Part I Application Fee was wired as per your instructions on xx/xx/xx.

We intend to submit our complete Part II submission on the due date for the [first, second, or third] round of Part II reviews as set forth in Section VI.A of the Solicitation. Based on the application process described in the Solicitation, we are prepared to close the financing on or about xx/xx/xxxx.

Should we decide to withdraw from consideration for a loan guarantee at any time prior to or after any of the Part II due dates, we will notify DOE in writing of that decision as soon as possible.

Sincerely,

Signature of Authorized Officer

[Name]

II. PART II Submission

The Part II submission may be filed at any time after DOE notifies an Applicant that its Part I submission is complete and its project or facility has been determined to be an Eligible Project. The Part II submission consists of the items summarized herein as well as other information that may be requested to facilitate DOE's due diligence review. Proposed projects or facilities eliminated by any of the requirements set forth in Part 2 of this Attachment A will not receive any further consideration. At any time after the submission of a Part II submission, to the extent that there are any material deviations from the information provided to DOE in such Part II submission, the Applicant must promptly notify DOE no later than three (3) business days after becoming aware of any such change by requesting approval from DOE to update their Part II submission via the Review/Submit page within the Application Portal. Upon DOE notice to Applicant of approval to re-open Applicant's application, Applicant must provide DOE with updated information via the Application Portal no later than ten (10) business days after receiving such notice from DOE.

A. Changes/Additions to Part I Submission

Provide a detailed description of all material amendments, modifications, and additions to the information provided in Part I of the application, including any changes in the proposed project's or facility's financing structure or other terms, the rationale for such changes and the expected impact on the project or facility.

B. Submission Index

Provide an index of all of the requirements contained in this Solicitation and where in your application submission these requirements are addressed.

C. Organization (Corporate and Personnel)

1. **Organizational Chart:** Provide a current corporate organizational chart showing the Applicant's relationship to any subsidiaries, affiliates, parent organizations, or joint ventures associated with the project or facility.
2. **Key Staff:** List the full names (including middle name or initial), home address, date of birth and taxpayer identification number of key staff to be involved with the project or facility. DOE will use this information for background check purposes and, with respect to any key staff providing credit support to the venture, for credit history verification purposes.
3. **Prior Experience:** Summarize the prior experience of each venture participant as it relates to carrying out undertakings similar to the one being proposed. Include a detailed description of current and previous manufacturing experience in this sector or similar sectors.
4. **Sponsor's Capabilities:** Describe each Project Sponsor's financial strengths and investment in the venture to date and as anticipated during the operational phase of the venture (e.g., continuing financial support). Explain the venture's strategic significance to each Project Sponsor.

D. Project Description

1. **Detailed Total Cost:** Provide a detailed estimate of Project Costs in accordance with generally accepted accounting principles and practices. Include a breakdown by cost category, year of expenditure and basis for amounts, and include a description of the methodology and key assumptions used to make each estimate. Also include costs for escalation and contingencies, and indicate whether each cost is firm or subject to change. Distinguish between eligible and ineligible Project Costs as set forth below.

Eligible Project Costs include:

- a) costs of acquisition, lease, or rental of real property, including engineering fees, surveys, title insurance, recording fees, and legal fees incurred in connection with land acquisition, lease or rental, site improvements, site restoration, access roads, and fencing;

- b) costs of engineering, architectural, legal and bond fees, and insurance paid in connection with construction of the facility; and materials, labor, services, travel and transportation for facility design, construction, startup, commissioning and shakedown;
- c) costs of equipment purchases;
- d) costs to provide equipment, facilities, and services related to safety and environmental protection;
- e) financial and legal services costs, including other professional services and fees necessary to obtain required licenses and permits and to prepare environmental reports and data;
- f) the cost of issuing project debt, such as fees, transaction and legal costs and other normal charges imposed by other Holders;
- g) costs of necessary and appropriate insurance and bonds of all types;
- h) costs of design, engineering, startup, commissioning and shakedown;
- i) costs of obtaining licenses to intellectual property necessary to design, construct, and operate the project;
- j) a reasonable contingency reserve for cost overruns during construction; and
- k) capitalized interest necessary to meet market requirements, reasonably required reserve funds and other carrying costs during construction; and
- l) other necessary and reasonable costs.

Ineligible Project Costs include:

- m) fees and commissions charged to Borrower, including finder's fees, for obtaining federal or other funds;
 - n) parent corporation or other affiliated entity's general and administrative expenses, and non-project related parent corporation or affiliated entity assessments, including organizational expenses;
 - o) goodwill, franchise, trade, or brand name costs;
 - p) dividends and profit sharing to stockholders, employees, and officers;
 - q) research, development, and demonstration costs of readying the innovative energy or environmental technology for employment in a commercial project;
 - r) costs that are excessive or are not directly required to carry out the project, as determined by DOE, including but not limited to the cost of hedging instruments;
 - s) expenses incurred after startup, commissioning, and shakedown before the facility has been placed in service;
 - t) borrower-paid Credit Subsidy Costs and Administrative Costs of Issuing a Loan Guarantee; and
 - u) operating costs.
2. **State and Local Support:** Describe the status of potential and actual forms, amounts and conditions of state and local support for the project or facility. Provide timelines for such assistance.
 3. **Proposed Project or Facility Location:** Identify the proposed location in the United States and the rationale for the site location. An Applicant proposing more than one location for a project must set forth in its Application its justification for siting the project in more than one domestic location.

E. Technical Information

1. **Key Contracts and Agreements:** Provide a top-level description, schedule, current status, and drafts or executed copies of all critical path contracts and agreements relevant to the investment,

design, engineering, financing, construction, startup, commissioning, shakedown, operation and maintenance of the project or facility, including:

- a) Engineering, procurement and construction contract(s);
- b) Long-term contracts for materials, components and equipment to be used in the project or facility;
- c) Any leases, operating or maintenance contracts; and
- d) Any additional relevant agreements or commitments.

If drafts or executed copies of any of the foregoing contracts and agreements are unavailable, provide a detailed description of such contracts and agreements, including all key terms, and indicate when copies of such contracts and agreements will be available.

2. **Engineering and Construction Plans:** A detailed description of the engineering and design contractor(s), engineering, procurement and construction contractor(s), equipment supplier(s), and construction schedules for the project.
 - a) For each engineering and design contractor, construction contractor and equipment supplier to be involved in the project, describe their major activities as linked to specified cost milestones and performance guarantees, as well as performance guarantees, performance bonds, liquidated damages provisions, and equipment warranties to be provided.
 - b) Describe the following:
 - (i) The extent to which all required contractors are engaged; and
 - (ii) The extent to which pre-construction design has been completed.
 - c) Describe each contractor or supplier's experience and qualifications as related to the proposed project or facility.
3. **Key Site Components:** Describe the key site components of the project and risks associated with their availability (e.g., water, electricity, gas or other utilities). Describe site access (roads, highway, and rail) including rights of way and easements.
4. **Production Costs:** Include an estimate of production costs for each product.
5. **Project Plan:** Provide a comprehensive project plan that will guide design, engineering, and construction of the project, including a description of:
 - a) Prior successful implementation of similar project plans for projects of this scale by the Applicant or any Project Sponsor;
 - b) Each step of the proposed manufacturing process;
 - c) Full material and energy balance, including system simulation for manufacturing processes, using industry standard software;
 - d) The process for selecting an engineering, procurement and construction firm, if applicable, or the internal resources used to serve this function;
 - e) Equipment requirements;
 - f) Rights or licenses to use manufacturing processes proposed;
 - g) An integrated schedule or project work plan that encompasses time periods for design, procurement (including long-lead procurements), construction (including mobilization, testing and start-up), and commissioning. The project shall identify any project dependencies such as the timing of land-use agreements, environmental permits or licenses, or physical improvements such as utility tie-ins.
 - h) Minimum design specifications in which process flow diagrams are coupled to preliminary cost estimates.
 - i) Project management tools, including Gantt charts, resource-based scheduling or other methods to assess and track progress;

- j) Staffing plans, including identification of costs and resources to design, engineer, construct, and operate the project or facility; and
 - k) Project risks and mitigation strategies, including risk related to scale-up, construction, performance, etc. and the potential project impact and mitigation of such risks; and
 - l) Contingency plans to address cost overruns and schedule slippage.
6. **Operating and Maintenance Plans:**
- a) Describe the operating and maintenance plans for the project or facility, including the plant operating plan, proposed providers, expected staffing requirements, anticipated parts inventory, major maintenance schedules, estimated annual downtime and any performance guarantees and related liquidated damages provisions.
 - b) Describe the plans for commissioning and initial operations, taking into account the construction schedule, the establishment of material supply chains, the hiring and training of management and operating personnel, logistics, potential bottlenecks and delays, financing for contingencies and working capital.
 - c) Describe any plans for expanding capacity over initial operations and the Applicant or the Project Sponsor's experience with comparable ramp-ups.
 - d) Describe the operations and maintenance plans for the project or facility, including acquisition of critical spares, inventory sources, operations and maintenance procedures, and associated risks.
7. **Decommissioning Plan:** Provide a detailed description of the project decommissioning, deconstruction and disposal plans, including anticipated costs and arrangements that have been made to ensure that funding will be available as necessary.
8. **Engineer's Report:**
Provide an IER that must include a review, evaluation, analysis, and recommendations in the following areas:
- a) the base technology,
 - b) project feasibility;
 - c) engineering and design approach;
 - d) integrated project schedule, including the schedule for completion;
 - e) cost estimates and technical input to the financial model;
 - f) contractual requirements and arrangements;
 - g) proposed supply chain;
 - h) project risks, including mitigation activities and milestones;
 - i) direct labor requirements during construction and operation;
 - j) siting and permitting;
 - k) testing and commissioning;
 - l) operation and maintenance;
 - m) decommissioning plan and costs; and
 - n) environmental compliance.

F. Legal and Regulatory Information

- 1. **Legal Opinions/Material Reports:** Provide a copy of all applicable legal opinions, and other material reports, analyses and reviews concerning the project or facility.
- 2. **Permits and Approvals:** Provide a complete list of federal, state and local permits, licenses and approvals required to site, construct, implement and operate the project or facility, including environmental authorizations or reviews necessary to commence construction. For permits and

- approvals already received, provide the filing and approval dates and parties involved. For all remaining required permits and approvals, provide documentation validating the filing date and the expected date(s) for obtaining them and describe all additional actions required to obtain such permits and approvals. Explain whether governmental entities (other than DOE) are required to approve the activities of the Applicant contemplated by this Solicitation or described in the application.
3. **Background and Legal Structure:**
 - a) Describe the organizational history, ownership, and legal structure (e.g., state governmental agency, local governmental agency, corporation, or partnership) of the Applicant and each Project Sponsor.
 - b) Include copies of the statutory authorities under which the Applicant and each Project Sponsor were created and copies of the good standing certificates for each such entity.
 - c) Provide a current organizational chart showing the Applicant's relationship to each Project Sponsor, the venture and to any subsidiaries or affiliates. Advise if there are any proposed changes to the current organizational structure of the Applicant.
 - d) Describe whether the project will be owned by a subsidiary of the Applicant or directly by the Applicant.
 4. **Legal Authority:** Describe the legal authority of the Applicant to carry out the proposed project activities. Provide supporting documentation.
 5. **Litigation and/or Conflicts:** Disclose any current, threatened, or pending litigation involving the Applicant or, to the Applicant's knowledge, any other relevant party, related to permitting, public involvement, environmental issues, construction defects, securities fraud, conflict of interest, failure to perform under a local, state or federal contract, or other charges which may reflect on the Applicant's or any Project Sponsor's financial position or ability to complete the project.
 6. **Potential Environmental Impacts:** Submit a report containing the status of all state and local environmental reviews and an analysis of the potential environmental impacts and risks of the project or facility in sufficient detail to enable DOE to assess the significance of the environmental impacts and risks and to determine the level of NEPA review that will be required. See Attachment C for guidance regarding required environmental information.

G. Business Plan

Provide a business plan that demonstrates the Applicant's expertise, financial strength and management capability to undertake and operate the project as proposed.

1. **Products:** Provide a detailed description of each product to be manufactured by the project or facility.
2. **Applicant's Capability:** Describe in detail the capabilities and experience of the Applicant and each Project Sponsor that will enable the project to be successful.
3. **Market Analysis:**
 - a) Include an analysis of the current and projected market for each product to be manufactured. Discuss the prevailing economic and demographic trends in the target market, both on a macroeconomic basis and for each product to be manufactured. Identify the market's dependency on tax benefits or other government policy. Provide a justification for revenue projections (price and volume). Describe the project's projected customer base.
 - b) Describe the Applicant's current and potential competitors for the products to be manufactured.
 - c) Provide a detailed description of any competitive advantages.

4. **Operating and Market-Related Risks and Mitigation Strategies:** Provide a detailed analysis of the operating and market-related risks associated with the project (e.g., market factors, price volatility, etc.) and mitigation strategies to be employed (e.g., sales contracts and reserves).
5. **Management Plan:**
 - a) Provide a staffing chart indicating the individuals (including position and qualifications) proposed to operate the project. Provide a description of the management plan of operations to be employed in carrying out the project, and information concerning the management experience of each officer or key person associated with the project; and
 - b) Describe the role of management in the operation of the Applicant's other businesses, if any.
6. **Supply and Sales Arrangements:**
 - a) Provide a detailed analysis of the market for any product or system to be produced by the project or facility, including relevant economics justifying the analysis;
 - b) Provide a detailed description of the project's plans for ensuring an adequate supply of materials, equipment and components as needed for successful operation. Provide drafts or executed copies of all material supply contracts for the project;
 - c) Provide the project's forecast for sales capacity;
 - d) Provide drafts or executed copies of all sales contracts or other revenue-generating agreements that will provide revenue for the project. Provide an analysis of the creditworthiness of customers who are party to such agreements; and
 - e) Provide copies and detailed summaries of all other material sales and revenue contracts.
7. **Insurance Coverage:** Provide a detailed description of the proposed insurance coverage for the project, together with a report from an insurance consultant that addresses the appropriateness and adequacy of such coverage.
8. **Growth Plan:** Describe any proposals for expanding the business enterprise beyond the project.
9. **Jobs Created/Retained:** Provide a brief description of the number and types of jobs expected to be created or retained in the United States if the project were to proceed as proposed in the application.⁷ The types of jobs may be expressed using job titles, broad labor categories or the Applicant's existing practice for describing jobs provided that the descriptions provided are commercially identifiable. The number of jobs shall be expressed as full-time equivalent, calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Applicant. Applicants should include in their narrative the information used to calculate the full-time equivalent figure.

H. Financial Plan

1. **Financial Model and Analysis:**
 - a) Include a financial model with pro-forma financial statements. List the major assumptions in a separate worksheet within the model.
 - (i) Include assumptions for the proposed tenor of the Guaranteed Obligation, plus two (2) years.
 - (ii) Include detailed income statements, balance sheets, cash flow statements and waterfall statements.
 - (iii) Include financial ratios (e.g., interest coverage ratios, fixed charge coverage ratios, debt-to-capital ratios, asset coverage ratios and working capital ratios (including high and low

⁷ Section 1512 of the Recovery Act states that "jobs expected to be created" means those new positions reasonably expected to be created and filled, or previously existing unfilled positions that are reasonably expected to be filled, as a result of Recovery Act funding. "Jobs or positions expected to be retained" means those previously existing filled positions that are reasonably expected to be retained as a result of Recovery Act funding. A job cannot be both created and retained.

- points)) and other relevant terms in the proposed term sheet. Highlight those periods during construction and operation in which non-compliance with the proposed financial ratios is most likely.
- (iv) Include sensitivity analyses that demonstrate the project’s performance under appropriate stress scenarios, including low sales prices, reduced project performance, loss of major customers, high input material prices and the impact of future competing technologies.
 - (v) Include cost assumptions based on compliance with the Davis Bacon Act and, if applicable, the “Buy American” provisions of Section 1605 of the Recovery Act.
 - (vi) Include a complete description of the operational and financial assumptions and methodologies incorporated in the financial model.
- b) The financial analysis should demonstrate that there is reasonable prospect that the Applicant will be able to repay the principal and interest on the Guaranteed Obligation and any other project debt incurred. Discuss the principal factors that could impair the Applicant’s ability to meet its debt service obligations, including the Guaranteed Obligation.
2. **Detailed Financial Plan:** Provide a detailed financial plan for the proposed project, prepared in accordance with Generally Accepted Accounting Principles in the United States (“**U.S. GAAP**”).
- a) List all proposed sources of expected equity and debt funding by provider, type and aggregate amount, and provide a copy of the financial closing checklists for each financing, if available.
 - b) Describe uses, timing and amount of expected equity and debt funding.
 - c) For each party associated with the project, provide a detailed description of their projected liabilities over the term of the Loan Guarantee Agreement.
 - d) Include a summary of any funding intended to be procured through the use of special purpose entities. Summarize each tranche of funding (e.g., amount, maturity, amortization schedule, the proposed loan guarantee percentage, and whether it is a fixed- or floating-rate tranche).
 - e) Include a schedule indicating all anticipated short term financing or credit facilities required for on-going operations of the plant, including all working capital facilities, performance bonds and similar forms of financing available to or anticipated to be available to the project or facility. Describe the nature of the security or collateral that is intended to be made available to secure these working capital and other short term facilities.
3. **Proposed Term Sheet:** Include a very detailed proposed term sheet for the Guaranteed Obligation.
4. **Financial Statements:** Provide audited financial statements of the Applicant and Project Sponsors for the past three years (or since inception if the Applicant or the Project Sponsor has not been in existence for at least three years), prepared in accordance with U.S. GAAP by an independent certified public accountant firm acceptable to DOE. Provide quarterly financial statements for the current fiscal year of each such party. Include all associated notes and describe business and financial interests of controlling or commonly controlled organizations or persons, including parent companies, subsidiaries and other affiliated entities or partners of the Applicant or Project Sponsors.
5. **Credit History:** Provide the credit history of the Applicant and any person or business entity owning or controlling a five percent (5%) or greater interest in the project or the Applicant. Provide the full name of the person or entity, address, date of organization or date of birth, as applicable, and a taxpayer identification number. DOE is not authorized to issue a loan guarantee to any party that is delinquent on federal debt, including federal tax debt.
6. **Collateral:** Provide a listing, describe, and value all assets associated, or to be associated, with the project and any other assets that will serve as collateral for the Guaranteed Obligations, including any intellectual property necessary for the operation of the project. Valuations must be supported by independent, third-party appraisals for existing assets and commercial cost substantiation for assets to be constructed for the purpose of the project, and in all cases

- acceptable to DOE. An appraisal of real property must be performed by a licensed or certified appraiser consistent with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. The appraisal should include information on the useful life of all physical assets expected to serve as collateral, including a depreciation schedule (prepared in accordance with U.S. GAAP).
7. **Consideration of Pari-Passu Status:** Provide information regarding any existing senior secured debt of any party providing a guarantee or other credit support.
 8. **Preliminary Credit Assessment:** Provide a preliminary credit assessment for the project or facility from a nationally recognized rating agency.
 - a) If the project will be financed using a corporate financing structure or will benefit from any third-party guarantees, provide a detailed public or private credit assessment of the Borrower and Project Sponsor or such third-party guarantor. Such assessment should take into account the impact of the proposed transaction on the Borrower and Project Sponsor or such third-party guarantor's credit rating and evaluate the Project Sponsor or third-party guarantor's financial viability in the absence of a DOE loan guarantee or any other credit support.
 - b) If the project will be financed using a project financing structure, provide a detailed public or private credit assessment of the project or facility. Such assessment should evaluate the project in the absence of a DOE loan guarantee or any other credit support.
 9. **Other Financial Information:** Include any other information about the Applicant and any Project Sponsor that provides a comprehensive summary of the Applicant or Project Sponsor's business and financial situation, including specific information relevant to analyzing historical cash flow on a secular, normalized basis.

I. Certifications

1. **Lobbying, Debarment and Related Certifications and Assurances:** In submitting an application for a loan guarantee under Title XVII, Applicants must provide certain certifications and assurances contained in the form entitled "U.S. Department of Energy Loan Guarantee Certifications and Assurances," which may be downloaded from the Program Website:
http://www.management.energy.gov/business_doe/business_forms.htm
2. **Applicant Validation Statement:** Provide a written statement and supporting analysis attesting that, based on the information provided to DOE, there is a reasonable prospect that all debt of the proposed project or facility (including the Guaranteed Obligation) will be repaid on time and in full (including interest) from cash flow generated by the project or facility and in accordance with the terms proposed in the application.

As part of the project evaluation process, DOE may require that Applicants provide additional certifications or supporting documentation. For the purposes of conducting background checks and verifying credit history, DOE may require that Applicants provide social security numbers for key staff and any person owning or controlling a five percent (5%) or greater interest in the project or the Applicant. Where the information requested is a social security number, the provision of the information is voluntary, but failure to disclose may result in disapproval of the application.

ATTACHMENT B

UNITED STATES
DEPARTMENT OF ENERGY

LOAN GUARANTEE APPLICATION FORM

All references made to Title XVII of the Energy Policy Act of 2005, Public Law 109-58 shall be deemed to be a reference to Title XVII, as amended, including by Section 406 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

DOE FORM NO.: 540.2
EFFECTIVE DATE: 03/08

FORM APPROVED
OMB NO. 1910-5134
EXPIRATION DATE: 03/11

U.S. Department of Energy Loan Guarantee for
Commercial Technology Renewable Energy Manufacturing Projects

This form is for use by Applicants seeking a U.S. Department of Energy Loan Guarantee pursuant to Title XVII of the Energy Policy Act of 2005, Public Law 109-58 (22 USC 16511, et seq.) and is governed by 10 CFR Part 609. (Social Security numbers are requested for purposes of verifying whether the Applicant has any tax delinquent accounts with the IRS as required by OMB Policy Circular A-129.) After completing this form, please print two copies and send to the address below. It is highly recommended that all mail be sent via Express Mail. Full applications should be uploaded via the Application Portal. For more information on the program, please visit our website at <http://www.lgprogram.energy.gov> or the Application Portal at <https://www.doeloan.com>.

Mail All Paper Copies to:

Director
U.S. DOE Loan Guarantee Program Office
1000 Independence Ave, SW
Washington, DC 20585-0121

**If you need assistance or have any questions
please contact the Loan Guarantee Program
Office at (202) 586-8336
or email us at lgprogram@hq.doe.gov**

In reference to DOE Solicitation DE-SOL-0002197

Invitation [No.]

GENERAL PROJECT INFORMATION

Organization Name

Federal Tax ID

Contact Last Name

First Name

Position/Title

Phone Number

Fax Number

Address

City

State

Zip Code (9 digit)

Email

DUNS Number

NAIC Number

Project Location – City

State

Zip Code (9 digit)

SUMMARY OF LOAN GUARANTEE REQUEST

(please indicate dollars in millions)

**Requested Period of Loan
 Guarantee:**

_____ years

Total Project Costs:

\$ _____

Equity:

\$ _____

**Proposed Guarantee
 Amount:**

\$ _____

Debt:

\$ _____

**Requested Loan Guarantee
 to Debt Instrument:**

_____ %

Debt to Equity Ratio:

_____ :

**Requested Loan Guarantee
 to Total Project Costs:**

_____ %

PROJECT SPONSORS (ASSET HOLDERS) WITH EQUITY OF FIVE PERCENT OR MORE

1 <u>Organization Name</u>		<u>Federal Tax ID or Social Security Number</u>
<u>Contact Last Name</u>	<u>First Name</u>	<u>Position/Title</u>
<u>Phone Number</u>		<u>Fax Number</u>
<u>Address</u>		
<u>City</u>	<u>State</u>	<u>Zip Code (9 digit)</u>
2 <u>Organization Name</u>		<u>Federal Tax ID</u>
<u>Contact Last Name</u>	<u>First Name</u>	<u>Position/Title</u>
<u>Phone Number</u>		<u>Fax Number</u>
<u>Address</u>		
<u>City</u>	<u>State</u>	<u>Zip Code (9 digit)</u>
3 <u>Organization Name</u>		<u>Federal Tax ID</u>
<u>Contact Last Name</u>	<u>First Name</u>	<u>Position/Title</u>
<u>Phone Number</u>		<u>Fax Number</u>
<u>Address</u>		
<u>City</u>	<u>State</u>	<u>Zip Code (9 digit)</u>

5% EQUITY HOLDERS (continued)		
4	<u>Organization Name</u>	<u>Federal Tax ID</u>
	<u>Contact Last Name</u>	<u>First Name</u>
		<u>Position/Title</u>
	<u>Phone Number</u>	<u>Fax Number</u>
<u>Address</u>		
	<u>City</u>	<u>State</u>
		<u>Zip Code (9 digit)</u>

CATEGORY OF PROJECT		
Category	Description	Check Box
1	Renewable energy systems	
2	Advanced fossil energy technology (including coal gasification meeting the criteria in paragraph 1703 (d) of Title XVII)	
3	Hydrogen fuel cell technology for residential, industrial or transportation applications	
4	Advanced nuclear energy facilities	
5	Carbon capture and sequestration practices and technologies, including agricultural and forestry practices	
6	Efficient electrical generation, transmission and distribution technologies	
7	Efficient end-use energy technologies	
8	Production facilities for fuel efficient vehicles, including hybrid and advanced diesel vehicles	
9	Pollution control equipment	
10	Refineries, meaning facilities at which crude oil is refined into gasoline	

RESTRICTIONS ON DISCLOSURE AND USE OF INFORMATION

Title XVII authorizes the collection of the information requested in this Solicitation. This information will aid DOE in its review of applications for loan guarantees pursuant to Title XVII, however, additional disclosures of this information may be made as required by law, including the Freedom of Information Act, 5 U.S.C. 552 (“**FOIA**”).

Patentable ideas, trade secrets, proprietary and confidential commercial or financial information, disclosure of which may harm the Applicant, should be included in an application only to the extent that such information is necessary to convey an understanding of the proposed project or facility. The use and disclosure of such data may be restricted, provided the Applicant specifically identifies and marks such data in accordance with the following:

1. Applicant hereby discloses that (fill in the blank below in this Application Form with the specific application sections containing such data):

“Sections ____ of this application contain data, including trade secrets or proprietary information that have been submitted in confidence and such data shall be used or disclosed for evaluation purposes only. If this Applicant is issued a loan guarantee under Title XVII of the Energy Policy Act of 2005, as amended, as a result of, or in connection with, the submission of this application, DOE shall have the right to use or disclose the data contained herein, other than such data that have been properly declared to be trade secrets or proprietary information in the loan guarantee agreement. This restriction does not limit the federal government’s right to use or disclose data obtained, without restriction, from any source, including the Applicant.”

2. Include the following legend on the first or cover page of each document or electronic file submitted that contains such data (be sure to specify the page numbers from such document or electronic file that contains such data):

“The data contained on pages ____ of this document or electronic file, which hereby forms a part of the application, have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed for evaluation purposes only; provided that, if this Applicant is issued a loan guarantee under Title XVII of the Energy Policy Act of 2005, as amended, as a result of, or in connection with, the submission of this application, DOE shall have the right to use or disclose the data herein, other than such data that have been properly declared to be trade secrets or proprietary information in the loan guarantee agreement. This restriction does not limit the federal government’s right to use or disclose data obtained, without restriction, from any source, including the Applicant.”

3. Include the following legend on each page of a document or electronic file containing such data (a) as a header on each such page or (b) to specifically identify and mark each line or paragraph on the page containing such data:

“The following contains trade secrets or proprietary information that (name of Applicant) requests not be released to persons outside the federal government, except for purposes of review and evaluation.”

FREEDOM OF INFORMATION ACT

Subject to applicable exemptions, applications generally must be disclosed if requested under FOIA. Because of the frequency of FOIA requests, and to enable DOE to respond to such requests in a timely manner, during the application process DOE will require Applicants to identify with specificity exempt information contained in the application. At an appropriate stage of the application process, applicants will be required to submit to DOE a bracketed version of the application, identifying specific business confidential information and any other information that is exempt from disclosure under applicable law.

In processing FOIA applications, DOE follows guidelines established by President Obama and the Office of the Attorney General. These guidelines can be viewed at:

http://www.whitehouse.gov/the_press_office/FreedomofInformationAct;

<http://www.justice.gov/ag/foia-memo-march2009.pdf>; and

<http://www.justice.gov/oip/foiapost/2008foiapost26.htm>.

DOE will not release any information that constitutes a trade secret or proprietary and confidential commercial or financial information. An entire loan application will not, however, be protected from disclosure. Information that is not exempt and can reasonably be segregated will be released; the exempt information will be deleted from the application prior to release. Generally, the Applicant's name, headings, table names, information already available to the public, and other non-proprietary information will be releasable. Applicants are entitled to request that information that DOE believes is not exempt not be released, but they must articulate the competitive harm that would result from the release of the information that they believe is confidential.

BURDEN DISCLOSURE STATEMENT

This data is being collected to support applications for loan guarantees from the Department of Energy under Title XVII of the Energy Policy Act of 2005 (22 USC 16511, *et seq.*). The data you supply will be used for the review of business and credit risks relating to projects which qualify for loan guarantees under Title XVII.

Public reporting burden for this collection of information is estimated to average 10.36 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of the Chief Information Officer, Records Management Division, IM-23, U.S. Department of Energy, 1000 Independence Ave SW, Washington, DC, 20585-1290; and to the Office of Management and Budget, OIRA, Washington, DC 20503.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Submission of this data is required to obtain a guarantee of the repayment of principal and interest on loans relating to projects that qualify for such guarantees under Title XVII of the Energy Policy Act of 2005 (22 USC 16511, *et seq.*).

CERTIFICATION

The undersigned certifies that the data and information submitted and the representations made in this application and any attachments to this application are true and correct, to the best of the Applicant's knowledge and belief after due diligence, and that the Applicant has not omitted any material facts.

The undersigned further certifies to having full authority to bind the Applicant.

Applicant (Organization Name)

Name of Applicant's Authorized Officer
(will fulfill on-line certification)

Title

Signature of Authorized Officer
(for paper copy only)

Date

ATTACHMENT C

UNITED STATES DEPARTMENT OF ENERGY

NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE

I. Information to be Submitted to DOE in an Application

Under Section III.B of this Solicitation, an application must include a report containing an analysis of the potential environmental impacts of the project that will assist DOE in assessing whether the project will comply with all applicable environmental requirements and will enable DOE to complete any necessary reviews under NEPA. Accordingly, each Applicant should submit the following information to assist DOE in determining the appropriate level of NEPA review, and in preparing an EA or EIS if necessary:

A. Description of Project Facilities, Site, and Surrounding Location: Describe and, as appropriate, identify and quantify:

1. Purpose of the facility and materials produced, including how they would be transported;
2. Present an overall schematic process diagram that identifies all inputs and outputs;
3. New facilities to be constructed, existing facilities to be modified, and materials and equipment to be used in construction;
4. Size of the new and modified facilities and of the total project site (including support facilities needed, such as parking lots and treatment facilities, and associated land uses, such as agricultural production areas);
5. Extent of necessary site clearing and excavation;
6. Associated construction of transport infrastructure (e.g., access roads, railroad links, docks, pipelines, electrical transmission facilities) or waste treatment facilities;
7. Construction milestones;
8. Expected operating cycle and any aspects of the project that could result in impacts that vary over time (e.g., with time of day or season of the year);
9. Expected project lifetime, including expansion of initial project at the proposed site and to other sites;
10. Project site and location, including a map;
11. Whether a Phase 1 EA has been completed, if so, summarize results; if not, please explain whether or not performance of a Phase 1 EA is advisable;
12. Ownership of or jurisdiction over the land by federal, state, regional, or local agency;
13. Existing transportation corridors and infrastructure;
14. Nearby land use and features (e.g., residences, industrial facilities, recreational areas);
15. Areas with special designation both on the project location and nearby, including National Forests, historic or culturally significant sites, wetlands, floodplains, critical habitat for designated threatened or endangered species or the presence of those species, prime and unique farmland;
16. Ambient air quality; and
17. Near-by populations (including minority and low-income).

B. Resource Consumption Rates and Effluent Emissions Streams and Impacts:

1. For both construction and operation, describe and, as appropriate, identify and quantify:

- a) Material resources to be used, including how they would be transported;
 - b) Source(s) and rates of water consumption and adequacy of water supply sources;
 - c) Onsite and offsite releases (air emissions, including carbon dioxide, odors; water effluents and other liquid waste streams; solid and hazardous waste), including rate and duration of such substances as criteria pollutants, wastewater, and hazardous substances;
 - d) Onsite and offsite waste treatment and disposal; and
 - e) Number of on-site workers.
2. Identify a spectrum of scenarios that could result from process upsets, accidents, human error, and intentional destructive acts.
 3. Analysis of potential impacts to physical, biological, cultural, and socioeconomic resources from facility construction and operation, including any mitigating measure(s) to be used or considered to be used to reduce environmental impacts.
- C. Status of other environmental and regulatory reviews:** Such status reports should include, but not be limited to:
1. If the proposed project would require review or permitting by another federal agency or by a state, regional, or local agency, identify the required reviews and permits and tell the status of each; and
 2. If an environmental impact review (e.g. NEPA documentation, agency consultations) has been prepared (or is in the process of being prepared or is anticipated) for the proposed project (by another federal agency or a state agency), provide a summary or copy of the review.
- D. Alternative sites or operating parameters:** Please identify:
1. Any other sites considered for the proposed project, and state whether they remain options or give the reasons for not proposing them; and
 2. Any alternative operating parameters for the proposed project (e.g. manufacturing materials or processes to be used) and state whether they remain options or give the reasons why options are not available.
- E. Post-operational requirements:** To the extent possible, please describe:
1. Any reasonably foreseeable future requirements, including site close-out and site restoration; and
 2. Any related decontamination and decommissioning activities, including associated waste streams.
- F. Other actions in the project area:** Describe existing or possible future facilities and activities that may impact the same resources as the proposed project in the same geographic area(s) during the same operational time frame, including those by other agencies, companies, or individuals.

ATTACHMENT D

UNITED STATES DEPARTMENT OF ENERGY

POST-SELECTION PROCESS AND ADDITIONAL PROVISIONS

I. Post-Selection Process

A. Project Due Diligence, Underwriting and Negotiation

The due diligence, underwriting and negotiation phase of the loan guarantee process will involve DOE's detailed examination of the project or facility, including reviews of the Applicant's technical information, business and financial plans, and proposed organizational structure and staffing. During the evaluation of an application, DOE will undertake its due diligence review and underwriting process with the assistance of its independent consultants and outside counsel and DOE will consult with the Treasury and OMB, as DOE deems appropriate or as required by law or regulation. During the course of this process, it is expected that extensive dialogue between DOE and the Applicant will occur with respect to every aspect of the project or facility. Generally, communications with Applicants are not permitted with respect to the pending application, except in instances when DOE initiates such communication. DOE may request additional information to clarify information submitted by Applicants. Requests by DOE for additional information, documentation, or briefings do not signify that a project or facility has been selected for due diligence, underwriting and negotiation or approved for a loan guarantee. As part of its review, DOE will identify, assess and estimate the risks associated with the project or facility. Based on the outcome of the technical, financial and legal reviews, this risk analysis will determine the types and magnitude of the risks associated with the project or facility, proper risk allocation among the parties and the extent to which risks have been mitigated.

II. Term Sheets and Conditional Commitments

The issuance or negotiation of a Term Sheet does not constitute a commitment by DOE to issue a loan guarantee. If DOE approves a Term Sheet, upon the Applicant's acceptance and execution of such Term Sheet, it will become a Conditional Commitment between DOE and the Applicant. Any Conditional Commitment entered into by an Applicant and DOE will be conditionally binding. The Secretary may terminate a Conditional Commitment for any reason at any time prior to the execution of the Loan Guarantee Agreement.

- A.** After review and evaluation of an application and all additional information requested and received by DOE, DOE may offer to an Applicant detailed terms and conditions that must be met, including terms and conditions that must be met by the Applicant, Project Sponsor, and Eligible Lender or other Holder.
- B.** The terms and conditions required by DOE will be expressed in a written Term Sheet signed by a Contracting Officer and addressed to the Applicant. The Term Sheet will request that the Project Sponsor express agreement with the terms and conditions contained in the Term Sheet by signing the Term Sheet in the designated place. The person signing the Term Sheet must be a duly authorized official or officer of the Applicant. The Term Sheet will include an expiration date on which the terms offered will expire unless the Contracting Officer agrees in writing to extend the expiration date.
- C.** The Applicant may respond to the Term Sheet offer in writing or may request discussions or meetings on the terms and conditions contained in the Term Sheet, including requests for clarifications or revisions. When DOE and the Applicant agree on all of the final terms and conditions and both parties sign the Term Sheet, the Term Sheet becomes a Conditional Commitment. When and if all of the terms

and conditions specified in the Conditional Commitment have been met, DOE and the Applicant may enter into a Loan Guarantee Agreement.

- D. DOE's obligations under each Conditional Commitment are conditional upon statutory authority having been provided in advance of the execution of the Loan Guarantee Agreement sufficient under FCRA and Title XVII for DOE to execute the Loan Guarantee Agreement, and either an appropriation has been made or a borrower has paid into the Treasury sufficient funds to cover the full Credit Subsidy Cost for the loan guarantee that is the subject of the Conditional Commitment.

The Applicant is required to pay the Facility Fee to DOE to cover the Administrative Cost of Issuing a Loan Guarantee for the period of the Term Sheet through the closing of the Loan Guarantee Agreement.

III. Closing On the Loan Guarantee Agreement

- A. Subsequent to entering into a Conditional Commitment with an Applicant and after consultation with the Applicant, DOE will set a closing date for execution of Loan Guarantee Agreement.
- B. By the closing date, the Applicant must have satisfied all of the detailed terms and conditions contained in the Conditional Commitment and other related documents and all other contractual, statutory, and regulatory requirements. If the Applicant has not satisfied all such terms and conditions by the closing date, the Secretary may, in his/her sole discretion, set a new closing date or terminate the Conditional Commitment.
- C. In order to enter into a Loan Guarantee Agreement at closing:
 - 1. DOE must have received authority in an appropriations act for the loan guarantee; and
 - 2. All other applicable statutory, regulatory, or other requirements must be fulfilled.
- D. Prior to, or on, the closing date, DOE will ensure that:
 - 1. Pursuant to section 1702(b) of Title XVII, DOE has received payment of the Credit Subsidy Cost of the loan guarantee, as defined in this Solicitation from either (but not from a combination) of the following:
 - a) A Congressional appropriation of funds; or
 - b) A payment from the Borrower.
 - 2. Pursuant to section 1702(h) of Title XVII, DOE has received from the Borrower the Application and Facility Fees and, if applicable, the Maintenance Fee, or portions thereof, for the Administrative Cost of Issuing the Loan Guarantee, as specified in the Loan Guarantee Agreement;
 - 3. OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost of the loan guarantee;
 - 4. Treasury has been consulted as to the terms and conditions of the Loan Guarantee Agreement;
 - 5. The Loan Guarantee Agreement and related documents contain all terms and conditions DOE deems reasonable and necessary to protect the interest of the United States; and
 - 6. All conditions precedent specified in the Conditional Commitment are either satisfied or waived by a Contracting Officer and all other applicable contractual, statutory, and regulatory requirements are satisfied.
- E. Not later than the period approved in writing by the Contracting Officer, which may not be less than thirty (30) days prior to the closing date, the Applicant must provide in writing updated project financing information if the terms and conditions of the financing arrangements changed between execution of the Conditional Commitment and that date. The Conditional Commitment must be updated to reflect the revised terms and conditions.

- F. Not less than thirty (30) days prior to closing, the Applicant must provide a credit rating from a nationally recognized rating agency reflecting the revised Conditional Commitment for the project without a federal guarantee.
- G. Changes in the terms and conditions of the financing arrangements will affect the Credit Subsidy Cost for the Loan Guarantee Agreement. DOE may postpone the expected closing date pursuant to any changes submitted under paragraph E. and F. of this Section III. In addition, DOE may choose to terminate the Conditional Commitment.

IV. Loan Guarantee Agreement

Any Loan Guarantee Agreement entered into in connection with this Solicitation shall require that Applicants and Project Sponsors comply with all applicable Recovery Act requirements.

A. Contractual Obligation.

Only a Loan Guarantee Agreement executed by a duly authorized DOE Contracting Officer can contractually obligate DOE to guarantee loans or other debt obligations.

B. Oral Representations Not Binding.

DOE is not bound by oral representations made during the application stage or during any negotiation process.

C. Use of Funds.

Except if explicitly authorized by an act of Congress, no funds obtained from the federal government, or from a loan or other instrument guaranteed by the federal government, may be used to pay for Credit Subsidy Costs, administrative fees, or other fees charged by or paid to DOE relating to the Title XVII program or any loan guarantee thereunder.

D. General Provisions of Loan Guarantee Agreement.

Prior to the execution by DOE of a Loan Guarantee Agreement, DOE must ensure that the following requirements and conditions are satisfied:

1. The project or facility qualifies as an Eligible Project under Title XVII and is not a research, development, or demonstration project;
2. The project or facility will be constructed and operated in the United States;
3. The face value of the debt guaranteed by DOE is limited to no more than eighty percent (80%) of total Project Costs, however, for projects receiving a Section 48C tax credit, in no case shall the total debt guaranteed by DOE exceed sixty percent (60%) of total Project Costs.
4. Where DOE guarantees one hundred percent (100%) of the Guaranteed Obligation, the loan shall be funded by the Federal Financing Bank;
5. The Borrower and other principals involved in the project or facility have made or will make a significant equity investment in the project or facility;
6. The Borrower is obligated to make full repayment of the principal and interest on the Guaranteed Obligations and other project debt over a period of up to the lesser of thirty (30) years or ninety percent (90%) of the projected useful life of the project or facility's major physical assets, as calculated in accordance with generally accepted accounting principles and practices. The non-guaranteed portion of any Guaranteed Obligation must be repaid on a pro-rata basis, and may not be repaid on a shorter amortization schedule than the guaranteed portion. Any project-related financing or credit arrangement (other than the Guaranteed Obligation) may have a shorter or faster amortization schedule than the Guaranteed Obligation if DOE determines that the resulting financing structure of the project:

- a) Allocates to DOE a reasonably proportionate share of the default risk, in light of (i) DOE's share of the total project financing, (ii) risk allocation among the credit providers, and (iii) internal and external credit enhancements; and
 - b) Is appropriate to assure reasonable prospect of repayment of the principal of and interest on the DOE Guaranteed Obligation and to protect the interests of the United States in the case of default;
7. The loan guarantee does not finance, either directly or indirectly, tax-exempt debt obligations, consistent with the requirements of section 149(b) of the Internal Revenue Code;
 8. The amount of the loan guaranteed, when combined with other funds committed to the project or facility, will be sufficient to carry out the project or facility, including adequate contingency funds;
 9. There is a reasonable prospect of repayment by Borrower of the principal of and interest on the Guaranteed Obligations and other project debt;
 10. The Borrower has pledged project assets and other collateral or surety, including non project-related assets, determined by DOE to be necessary to secure the repayment of the Guaranteed Obligations;
 11. The Loan Guarantee Agreement and related documents include detailed terms and conditions necessary and appropriate to protect the interest of the United States in the case of default, including ensuring availability of all the intellectual property rights, technical data including software, and technology necessary for any person or entity selected, including DOE, to complete, operate, convey, and dispose of the defaulted project or facility;
 12. The interest rate on any Guaranteed Obligation is determined by DOE, after consultation with Treasury, to be reasonable, taking into account the range of interest rates prevailing in the private sector for similar obligations of comparable risk guaranteed by the federal government;
 13. Any Guaranteed Obligation is not subordinate to any loan or other debt obligation;
 14. There is satisfactory evidence that Borrower and the Eligible Lender are willing, competent, and capable of performing the terms and conditions of the Guaranteed Obligations and other debt obligation and the Loan Guarantee Agreement, and will diligently pursue the project or facility;
 15. The Borrower has made the initial (or total) payment of fees for the Administrative Cost of Issuing a Loan Guarantee for the construction and operational phases of the project or facility, as specified in the Conditional Commitment;
 16. The Eligible Lender or other servicer acting on DOE's behalf has taken and is obligated to continue to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligation;
 17. If the Borrower is to make payment in full for the Credit Subsidy Cost of the loan guarantee pursuant to section 1702(b)(2) of Title XVII, such payment must be received by DOE prior to, or at the time of, closing;
 18. DOE or its representatives have access to the project site at all reasonable times in order to monitor the performance of the project or facility;
 19. DOE, the Eligible Lender, and the Borrower have reached an agreement as to the information that will be made available to DOE and the information that will be made publicly available;
 20. The prospective Borrower has filed applications for or obtained any required regulatory approvals for the project or facility and is in compliance, or promptly will be in compliance, where appropriate, with all federal, state, and local regulatory requirements;
 21. The Borrower has no delinquent federal debt, including tax liabilities, unless the delinquency has been resolved with the appropriate federal agency in accordance with the standards of the Debt Collection Improvement Act of 1996;

22. The Federal Financing Bank is an Eligible Lender and meets DOE's lender eligibility and performance requirements contained in Section V of this Attachment D;
23. The servicer meets the servicing performance requirements of Section V of this Attachment D;
24. The Loan Guarantee Agreement must provide that, in the event of a default by the Borrower:
 - a) Interest accrues on the Guaranteed Obligations at the rate stated in the Loan Guarantee Agreement or Loan Agreement until DOE makes full payment of the defaulted Guaranteed Obligations;
 - b) Upon payment of the Guaranteed Obligations by DOE, DOE is subrogated to the rights of the Holders of the debt, including all related liens, security, and collateral rights and has superior rights in and to the property acquired from the recipient of the payment as provided in Section VIII of this Attachment D;
 - c) The Eligible Lender or other servicer acting on DOE's behalf is obligated to take those actions necessary to perfect and maintain liens on assets which are pledged as collateral for the Guaranteed Obligations; and
 - d) The holder of pledged collateral is obligated to take such actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery upon default by Borrower on the Guaranteed Obligations;
25. The Loan Guarantee Agreement must contain audit provisions that provide, in substance, as follows:
 - a) The Eligible Lender or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, must keep such records concerning the project or facility as are necessary to facilitate an effective and accurate audit and performance evaluation of the project or facility as required in Section X of this Attachment D; and
 - b) DOE and the Comptroller General, or their duly authorized representatives, must have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, as applicable. Examination of records may be made during the regular business hours of the Borrower, Eligible Lender or other Holder, or other party servicing the Guaranteed Obligations, or at any other time mutually convenient as required in Section X of this Attachment D.
26. The Loan Guarantee Agreement and related agreements contain such other terms and conditions as DOE deems reasonable and necessary to protect the interest of the United States; including without limitation provisions for:
 - a) Such collateral and other credit support for the Guaranteed Obligation; and
 - b) Such collateral sharing priorities (subject always to Section 1702(d)(3) of Title XVII) and voting rights among creditors and other intercreditor arrangements as, in each case, DOE deems reasonable and necessary to protect the interests of the United States.

E. Transferability.

1. The Eligible Lender or other Holder may sell, assign or transfer a Guaranteed Obligation to another Holder that meets the requirements of this Solicitation. Such Holder to which a Guaranteed Obligation is assigned or transferred is required to fulfill all servicing, monitoring, and reporting requirements contained in the Loan Guarantee Agreement and these regulations if the transferring Eligible Lender or other Holder was forming these functions and transfer such functions to the new Holder. Any assignment or transfer, however, of the servicing, monitoring, and reporting functions must be approved by DOE in writing in advance of such assignment.

2. The Secretary, or the Secretary's designee or contractual agent, for the purpose of identifying Holders with the right to receive payment under the guarantees shall include in the Loan Guarantee Agreement or related documents a procedure for tracking and identifying Holders of Guarantee Obligations. These duties usually will be performed by the servicer. Any contractual agent approved by the Secretary to perform this function cannot transfer or assign this responsibility without the prior written consent of the Secretary.

V. Lender Servicing Requirements

The servicing duties shall be performed by the Eligible Lender, DOE or other servicer if approved by the Secretary. When performing the servicing duties the Eligible Lender, DOE or other servicer shall exercise the level of care and diligence that a reasonable and prudent lender would exercise when servicing a loan made without a Federal guarantee, including:

- A. During the construction period, enforcing all of the conditions precedent to all loan disbursements, as provided in the Loan Guarantee Agreement, Loan Agreement and related documents;
- B. During the operational phase, monitoring and servicing the Debt Obligations and collection of the outstanding principal and accrued interest as well as ensuring that the collateral package securing the Guaranteed Obligations remains uncompromised; and
- C. As specified by DOE, providing annual or more frequent financial and other reports on the status and condition of the Guaranteed Obligations and the Eligible Project, and promptly notifying DOE if it becomes aware of any problems or irregularities concerning the Eligible Project or the ability of the Borrower to make payment on the Guaranteed Obligations or other debt obligations.

VI. Principal and Interest Assistance Contract

With respect to the guaranteed portion of any Guaranteed Obligation, and subject to the availability of appropriations, DOE may enter into a contract to pay Holders, for and on behalf of Borrower, from funds appropriated for that purpose, the principal and interest charges that become due and payable on the unpaid balance of the guaranteed portion of the Guaranteed Obligation, if DOE finds that:

- A. The Borrower:
 1. Is unable to make the payments and is not in default; and
 2. Will, and is financially able to, continue to make the scheduled payments on the remaining portion of the principal and interest due under the non-guaranteed portion of the debt obligation, if any, and other debt obligations of the project or facility, or an agreement, approved by DOE, has otherwise been reached in order to avoid a payment default on non-guaranteed debt.
- B. It is in the public interest to permit the Borrower to continue to pursue the purposes of the project or facility;
- C. In paying the principal and interest, the federal government expects a probable net benefit to the federal government will be greater than that which would result in the event of a default;
- D. The payment authorized is no greater than the amount of principal and interest that the Borrower is obligated to pay under the terms of the Loan Guarantee Agreement; and
- E. The Borrower agrees to reimburse DOE for the payment (including interest) on terms and conditions that are satisfactory to DOE and executes all written contracts required by DOE for such purpose.

VII. Full Faith and Credit and Incontestability

The full faith and credit of the United States is pledged to the payment of all Guaranteed Obligations issued in accordance with this Solicitation with respect to principal and interest. Such guarantee shall be conclusive evidence that it has been properly obtained; that the underlying loan qualified for such

guarantee; and that, but for fraud or material misrepresentation by the Holder, such guarantee will be presumed to be valid, legal, and enforceable.

VIII. Default, Demand, Payment, and Collateral Liquidation

- A.** In the event that the Borrower has defaulted in the making of required payments of principal or interest on any portion of a Guaranteed Obligation, and such default has not been cured within the period of grace provided in the Loan Guarantee Agreement and/or the Loan Agreement, the Eligible Lender or other Holder, or nominee or trustee empowered to act for the Eligible Lender or other Holder (referred to in this section collectively as the “Holder”), may make written demand upon the Secretary for payment pursuant to the provisions of the Loan Guarantee Agreement.
- B.** In the event that the Borrower is in default as a result of a breach of one or more of the terms and conditions of the Loan Guarantee Agreement, note, mortgage, Loan Agreement, or other contractual obligations related to the transaction, other than the Borrower’s obligation to pay principal or interest on the Guaranteed Obligation, as provided in Section VIII of this Attachment D, the Holder will not be entitled to make demand for payment pursuant to the Loan Guarantee Agreement, unless the Secretary agrees in writing that such default has materially affected the rights of the parties, and finds that the Holder should be entitled to receive payment pursuant to the Loan Guarantee Agreement.
- C.** In the event that the Borrower has defaulted as described in Section VIII of this Attachment D and such default is not cured during the grace period provided in the Loan Guarantee Agreement, the Secretary shall notify the U.S. Attorney General and may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by Borrower pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without the need for consent or other action on the part of the Holders of the Guaranteed Obligations). In the event the Borrower is in default as described in paragraph B of Section VIII of this Attachment D, where the Secretary determines in writing that such a default has materially affected the rights of the parties, the Borrower must cure such default within the grace period provided in the Loan Guarantee Agreement. If the default is not cured during the period of grace, the Secretary may cause the principal amount of all Guaranteed Obligations, together with accrued interest thereon, and all amounts owed to the United States by the Borrower, pursuant to the Loan Guarantee Agreement, to become immediately due and payable by giving the Borrower written notice to such effect (without any need for consent or other action on the part of the Holders of the Guaranteed Obligations).
- D.** No provision of this regulation shall be construed to preclude forbearance by the Holder with the consent of the Secretary for the benefit of the Borrower.
- E.** Upon the making of demand for payment as provided in paragraph A or B of Section VIII of this Attachment D, the Holder shall provide, in conjunction with such demand or immediately thereafter, at the request of the Secretary, the supporting documentation specified in the Loan Guarantee Agreement and any other supporting documentation as may reasonably be required to justify such demand.
- F.** Payment of the Guaranteed Obligation as required by the Loan Guarantee Agreement shall be made sixty (60) days after receipt by the Secretary of written demand for payment, provided that the demand complies with the terms of the Loan Guarantee Agreement. The Loan Guarantee Agreement shall provide that interest shall accrue to the Holder at the rate stated in the Loan Guarantee Agreement until the Guaranteed Obligation has been fully paid by the federal government.
- G.** The Loan Guarantee Agreement shall provide that, upon payment of the Guaranteed Obligations, the Secretary shall be subrogated to the rights of the Holders and shall have superior rights in and to the property acquired from the Holders. The Holder shall transfer and assign to the Secretary all rights held by the Holder of the Guaranteed Obligation. Such assignment shall include all related liens, security, and collateral rights to the extent held by the Holder.

- H. Where the Loan Guarantee Agreement so provides, the Eligible Lender or other Holder, or other agent or servicer, as appropriate, and the Secretary may jointly agree to a work-out strategy and/or a plan of liquidation of the assets pledged to secure the Guaranteed Obligation and other applicable debt.
- I. Where payment of the Guaranteed Obligation has been made and the Eligible Lender or other Holder or other agent or servicer has not undertaken a plan of liquidation (or at any such earlier time as may be permitted by applicable agreements), the Secretary, acting through the U.S. Attorney General, in accordance with the rights received through subrogation or other applicable agreements may seek to foreclose on the collateral assets and/or take such other legal action as necessary for the protection of the federal government.
- J. If the Secretary (or an agent acting for the benefit of the Secretary) is awarded title to collateral assets pursuant to a foreclosure proceeding, the Secretary may take action to complete, maintain, operate, or lease such assets, or otherwise dispose of any such assets or take any other necessary action which the Secretary deems appropriate, in order that the original goals and objectives of the project or facility will, to the extent possible, be realized.
- K. In addition to foreclosure and sale of collateral pursuant thereto, the U.S. Attorney General shall take appropriate action in accordance with rights contained in the Loan Guarantee Agreement to recover costs incurred by the federal government as a result of the defaulted loan or other defaulted obligation. Any recovery so received by the U.S. Attorney General on behalf of the federal government shall be applied in the following manner: First to the expenses incurred by the U.S. Attorney General, DOE and any agent acting for the benefit of DOE in effecting such recovery; second, to reimbursement of any amounts paid by DOE as a result of the defaulted obligation; third, to any amounts owed to DOE under related principal and interest assistance contracts; and fourth, to any other lawful claims held by the federal government on such process. Any sums remaining after full payment of the foregoing shall be available for the benefit of other parties lawfully entitled to claim them.
- L. No action taken by the Eligible Lender or other Holder or other agent or servicer in respect of any pledged assets will affect the rights of any party, including the Secretary, having an interest in the loan or other debt obligations, to pursue, jointly or severally, to the extent provided in the Loan Guarantee Agreement or other applicable agreement, legal action against the Borrower or other liable parties, for any deficiencies owing on the balance of the Guaranteed Obligations or other debt obligations after application of the proceeds received upon liquidation.
- M. In the event that the Secretary considers it necessary or desirable to protect or further the interest of the United States in connection with the liquidation or sale of, collection from or other realization on the collateral or recovery of deficiencies due under the loan, the Secretary will take such action as may be appropriate under the circumstances.
- N. Nothing in this Solicitation precludes the Secretary from purchasing any Holder's or other person's interest in the project or facility upon liquidation or sale of, collection from or other realization on the collateral.

IX. Perfection of Liens and Preservation of Collateral

- A. The Loan Guarantee Agreement and other documents related thereto shall provide that:
 - 1. DOE in conjunction with the Federal Financing Bank where the loan is funded by the Federal Financing Bank, or other Holder or other agent or servicer will take those actions necessary to perfect and maintain liens, as applicable, on assets which are pledged as collateral for the Guaranteed Obligation; and
 - 2. Upon default by the Borrower, the holder of pledged collateral shall take such actions as the Secretary may reasonably require to provide for the care, preservation, protection, and maintenance of such collateral so as to enable the United States to achieve maximum recovery from the pledged assets. The Secretary shall reimburse the holder of collateral for reasonable and

appropriate expenses incurred in taking actions required by the Secretary (unless otherwise provided in applicable agreements). Except as provided in Section VIII of this Attachment D, no party may waive or relinquish, without the consent of the Secretary, any collateral securing the Guaranteed Obligation to which the United States would be subrogated upon payment under the Loan Guarantee Agreement.

- B. In the event of a default, the Secretary may enter into such contracts as the Secretary determines are required to preserve the collateral. The cost of such contracts may be charged to the Borrower.

X. Audit and Access to Records

- A. The Loan Guarantee Agreement and related documents shall provide that:

1. DOE in conjunction with the Federal Financing Bank where loans are funded by the Federal Financing Bank or other Holder or other party servicing the Guaranteed Obligations, as applicable, and the Borrower, shall keep such records concerning the project or facility as is necessary, including the Application, Term Sheet, Conditional Commitment, Loan Guarantee Agreement, Loan Agreement, mortgage, note, disbursement requests and supporting documentation, financial statements, audit reports of independent accounting firms, lists of all project assets and non-project assets pledged as security for the Guaranteed Obligations, all off-take and other revenue producing agreements, documentation for all project indebtedness, income tax returns, technology agreements, documentation for all permits and regulatory approvals and all other documents and records relating to the Eligible Project, as determined by the Secretary, to facilitate an effective audit and performance evaluation of the project or facility; and
2. The Secretary and the Comptroller General of the United States, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers and records of the Borrower, Eligible Lender or DOE or other Holder or other party servicing the Guaranteed Obligation, as applicable. Such inspection may be made during regular office hours of the Borrower, Eligible Lender or DOE or other Holder, or other party servicing the Eligible Project and the Guaranteed Obligations, as applicable, or at any other time mutually convenient.

- B. The Secretary may from time to time audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or the servicer or otherwise, and may exclude or reduce the amount of any item which the Secretary determines to be unnecessary or excessive, or otherwise not to be an item of Project Costs. The Borrower will make available to the Secretary all books and records and other data available to the Borrower in order to permit the Secretary to carry out such audits. The Borrower should represent that it has within its rights access to all financial and operational records and data relating to Project Costs, and agrees that it will, upon request by the Secretary, exercise such rights in order to make such financial and operational records and data available to the Secretary. In exercising its rights hereunder, the Secretary may utilize employees of other federal agencies, independent accountants, or other persons.

XI. Deviations

To the extent that such requirements are not specified by Title XVII or other applicable statutes, DOE may authorize deviations on an individual request basis from the requirements of this Solicitation upon a finding that such deviation is essential to program objectives and the special circumstances stated in the request make such deviation clearly in the best interest of the federal government. DOE will consult with OMB and the Secretary of the Treasury before DOE grants any deviation that would constitute a substantial change in the financial terms of the Loan Guarantee Agreement and related documents. Any deviation that was not captured in the Credit Subsidy Cost, however, will require either additional fees or discretionary appropriations. A recommendation for any deviation shall be submitted in writing to DOE. Such recommendation must include a supporting statement, which indicates briefly the nature of the deviation requested and the reasons in support thereof.